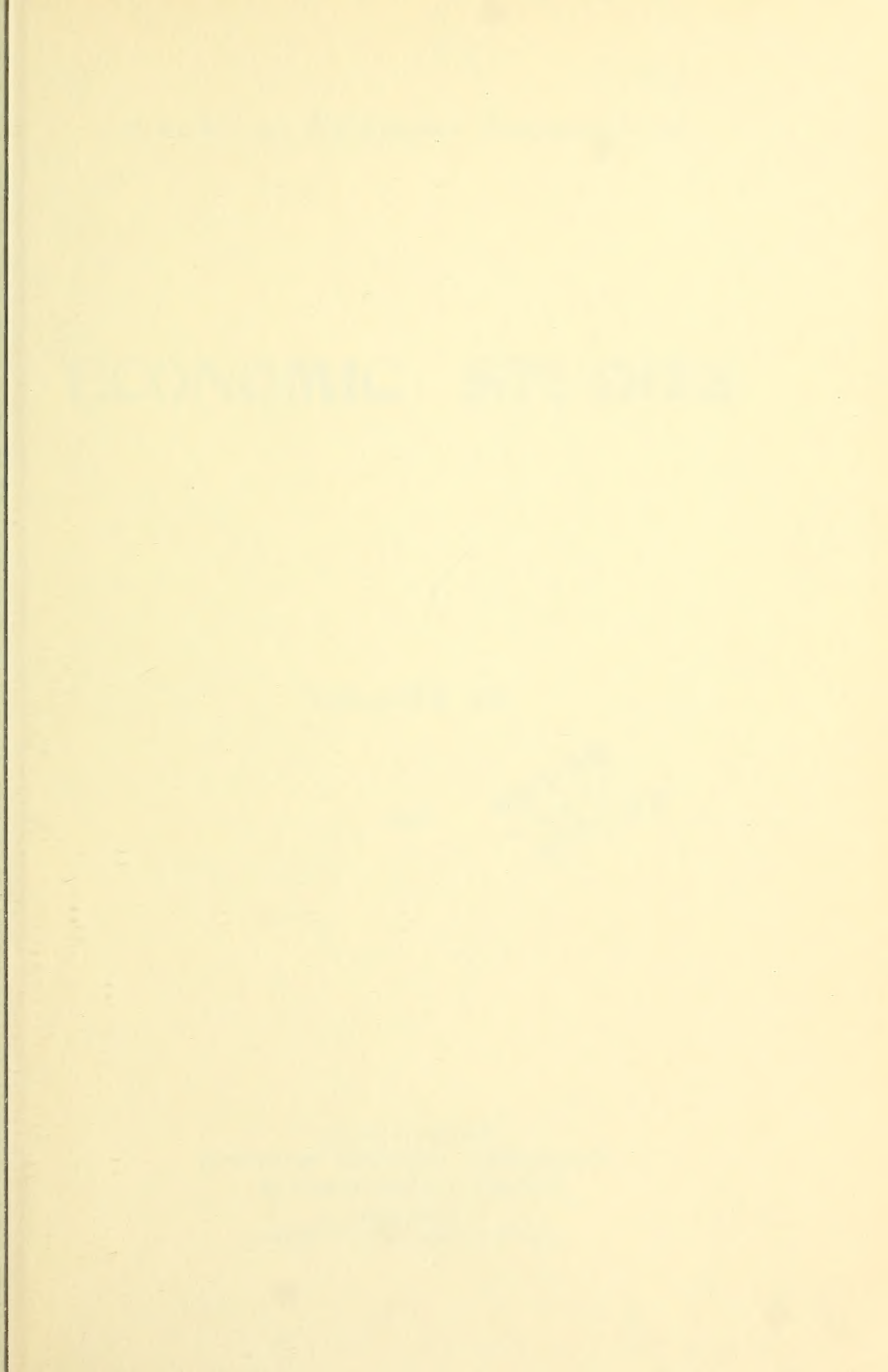
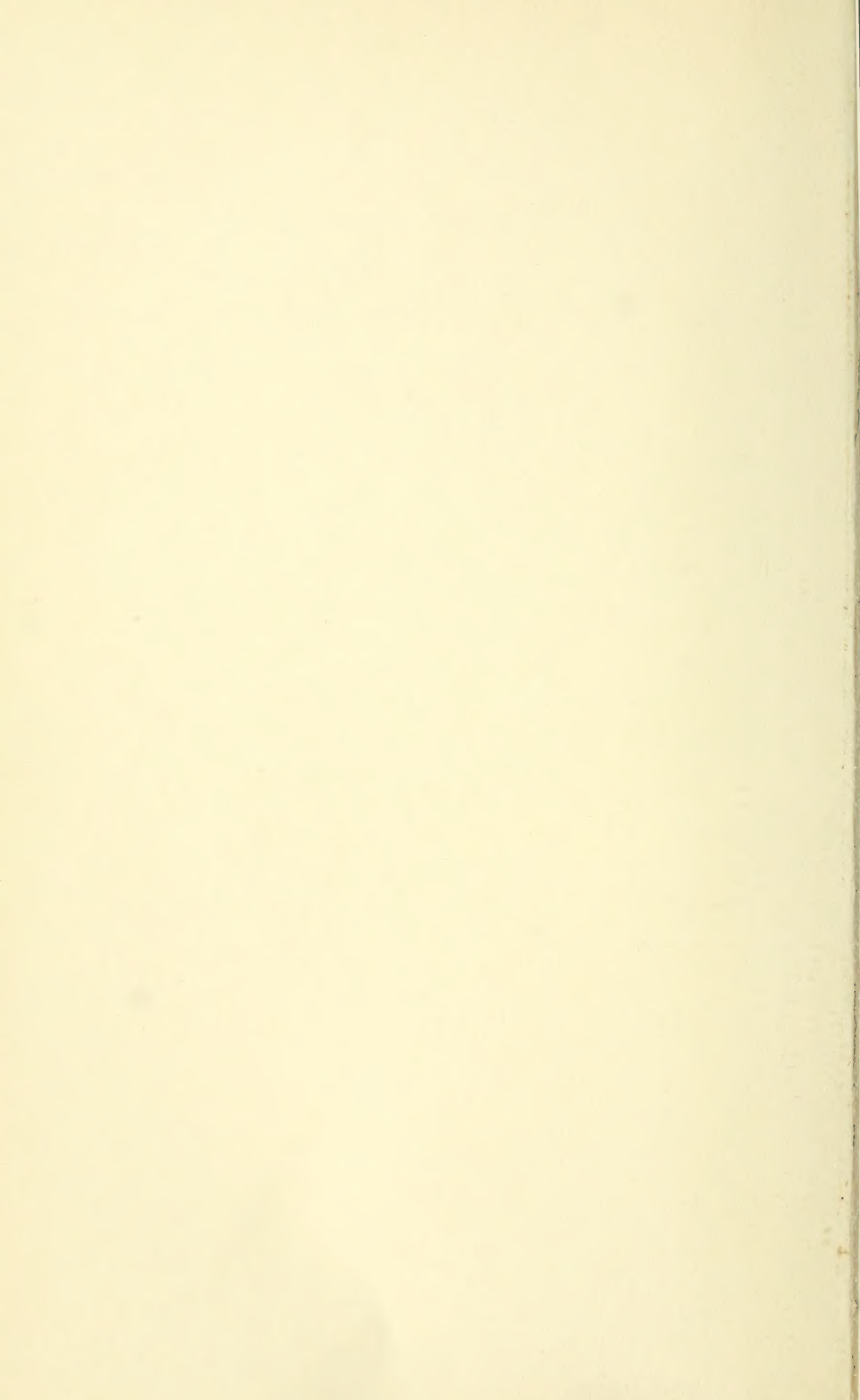


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AMERICAN ECONOMIC ASSOCIATION

ECONOMIC STUDIES

VOLUME III

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AMERICAN ECONOMIC ASSOCIATION

1898

TOGETHER WITH

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HAND-BOOK

OF THE

AMERICAN ECONOMIC

ASSOCIATION

1898

AMERICAN ECONOMIC ASSOCIATION.

The American Economic Association is an organization composed mainly of persons interested in the study of political economy or the economic phases of political and social questions. As may be seen by examining the list of members and subscribers printed elsewhere in this Hand-Book, all universities and most prominent colleges in the country are represented in the Association by their teachers of political economy and related subjects. A large number of members also are drawn from those interested as business men, journalists, lawyers or politicians, in the theories of political economy or, more often, in their applications to social life. There are also about one hundred subscribers, nearly all being large libraries.

The geographical distribution of its members and subscribers is indicated by the following list of states having more than ten of these in the Association March 1, 1897:

<i>States.</i>	<i>Number of members</i>	<i>States.</i>	<i>Number of members</i>
New York	148	Connecticut	19
Massachusetts	89	Michigan	19
Pennsylvania	60	Indiana	14
Illinois	37	Missouri	14
Ohio	32	Iowa	13
District of Columbia	27	New Jersey	11
Maryland	25	Wisconsin	11
California	21		—
		Total	540

Rather more than one-half of the members or subscribers are located in some one of the twenty-eight cities of the country each of which in 1890 had over one hundred thousand inhabitants and all of which together included not quite one-sixth of the population of the country. An undetermined number of the remainder live in the vicinity of these large cities. The following list includes all cities in which there were over ten members or subscribers, March 1, 1897:

New York	93	Baltimore	23
Philadelphia	43	Chicago	18
Boston	35	Brooklyn	11
Washington	27	Buffalo	10

			260

The annual meetings of the Association bring together for professional and social intercourse many teachers and public men. The last meeting was made noteworthy by the union of the American Historical Association and the American Economic Association in joint sessions and in less formal gatherings. It is hoped that this custom in force at the first two meetings of the Economic Association in 1885 and 1887, may be continued another year. These annual meetings contribute not a little to create and cement acquaintanceship and friendship between teachers of economics and cognate subjects in different institutions, and so to counteract any tendency to particularism which the geographical separation and the diverse traditions of American colleges might be deemed to foster.

The Association publishes one series bi-monthly and

another at irregular intervals, only the former being handled by the Post Office authorities at second-class rates of postage. The bi-monthly Studies are designed to be somewhat more popular in character than the Monographs and usually are much briefer. The issue of the Monographs is dependent upon the presentation of suitable manuscript and the condition of the treasury, but enough material is and will be published in that manner fully to justify the additional price of subscription for all the publications over that for the Studies alone. With the appearance in December, 1897, of the last Monograph, a pamphlet of four hundred pages on the Cotton Industry, a new series was begun, no longer divided into volumes or paged consecutively, but each paged and indexed by itself.

The officers of the Economic Association and the contributors to its publications receive no pay for their services, and thus the entire receipts of the Association are expended in printing and circulating its publications and in the slight expenses attendant upon the annual meetings. Thus any member may regard his annual dues either as a subscription to an economic publication, a payment for membership in a scientific association, or a contribution to a publication fund for aiding in the publication of manuscript that might not be accepted by a publishing house governed primarily by motives of profit, and that often could not be published by the writer without his incurring too heavy a burden of expense.

CONSTITUTION.

ARTICLE I.

NAME.

This Society shall be known as the AMERICAN ECONOMIC ASSOCIATION.

ARTICLE II.

OBJECTS.

1. The encouragement of economic research, especially the historical and statistical study of the actual conditions of industrial life.
2. The publication of economic monographs.
3. The encouragement of perfect freedom of economic discussion. The Association, as such, will take no partisan attitude, nor will it commit its members to any position on practical economic questions.
4. The establishment of a bureau of information designed to aid members in their economic studies.

ARTICLE III.

MEMBERSHIP.

Any person may become a member of this Association by paying three dollars, and after the first year may continue a member by paying an annual fee of three dollars.

On payment of fifty dollars any person may become a life member, exempt from annual dues.¹

ARTICLE IV.

HONORARY MEMBERS.

The Council may elect foreign economists of distinction, not exceeding twenty-five in number, honorary members of the Association. Each honorary member shall be entitled to receive all reports and publications of the Association.

ARTICLE V.

OFFICERS.

The officers of the society shall consist of a President, three Vice-Presidents, a Secretary, a Treasurer, a Publication Committee and a Council.

ARTICLE VI.

COUNCIL.

1. The Council shall consist of an indefinite number of members of the society, chosen, with the exception of the original members, for three years. It shall have power to fill all vacancies in its membership, and may add to its number.

2. It shall elect the President, Vice-Presidents, Secretary, and Treasurer, which officers, with the Chairman of the Publication Committee, shall constitute an Execu-

¹NOTE.—Each member receives all reports and publications of the Association.

tive Committee with such power as the Council may entrust to it.

3. The Council shall organize itself into a number of standing committees upon the various lines of research undertaken. These committees shall prepare reports from time to time upon such subjects relating to their respective departments as they may select, or as may be referred to them by the Council. These reports shall be presented to the Council at its regular or special meetings and be open to discussion. All papers offered to the society shall be referred to the appropriate committees before being read in the Council.

4. The Council shall have charge of the general interests of the society, and shall have power to call meetings and determine what reports, papers, or discussions are to be printed, and may adopt any rules or regulations for the conduct of its business not inconsistent with this constitution.

5. The Council shall elect a Committee on Publications, which shall consist of six members, so classed that after the first election the term of two members shall expire each year. This committee shall have charge of and responsibility for the scientific publications of the Association.

ARTICLE VII.

AMENDMENTS.

Amendments, after having been approved by a majority of the Council, may be adopted by a majority vote of the members present at any regular meeting of the Association.

BY-LAWS.

1. The President of the Association, who shall be *ex-officio* a member of the Council, shall preside at all meetings of the Council and Association, and perform such other duties as may be assigned to him by the Council. In case of inability to perform his duties, they shall devolve upon the Vice-Presidents in the order of their election, upon the Secretary and Treasurer, and upon the Chairmen of the Standing Committees, in the order in which the committees are mentioned in the list.

2. The Secretary shall keep the records of the Association, and perform such other duties as the Council may assign to him.

3. The Treasurer shall receive and have the custody of the funds of the Association, subject to the rules of the Council.

4. The following Standing Committees shall be organized :

- (1). On Labor.
- (2). On Transportation.
- (3). On Trade.
- (4). On Public Finance.
- (5). On Industrial and Technical Education.
- (6). On Exchange.
- (7). On General Questions of Economic Theory.
- (8). On Statistics.
- (9). On Teaching Political Economy.

The Executive Committee may appoint such special committees as it may deem best.

5. At any meeting called by the general summons of the President, five members shall constitute a quorum.

6. Papers offered for the consideration of the Council shall be referred by the Secretary, each to its appropriate committee.

7. In order to encourage economic research, the Association proposes to render pecuniary assistance in the prosecution of the same, and to offer prizes for the best monographs upon selected topics. It stands ready to accept and administer any fund placed at its disposal for either purpose.

8. The Executive Committee shall have power at any time to add new members to the Council.

9. The Executive Committee shall assign all members of the Council to one of the Standing Committees, and shall appoint the Chairmen of the Committees.

10. It shall be the duty of the Chairmen of the respective Committees to organize and direct the work of the same, under the general control of the Council.

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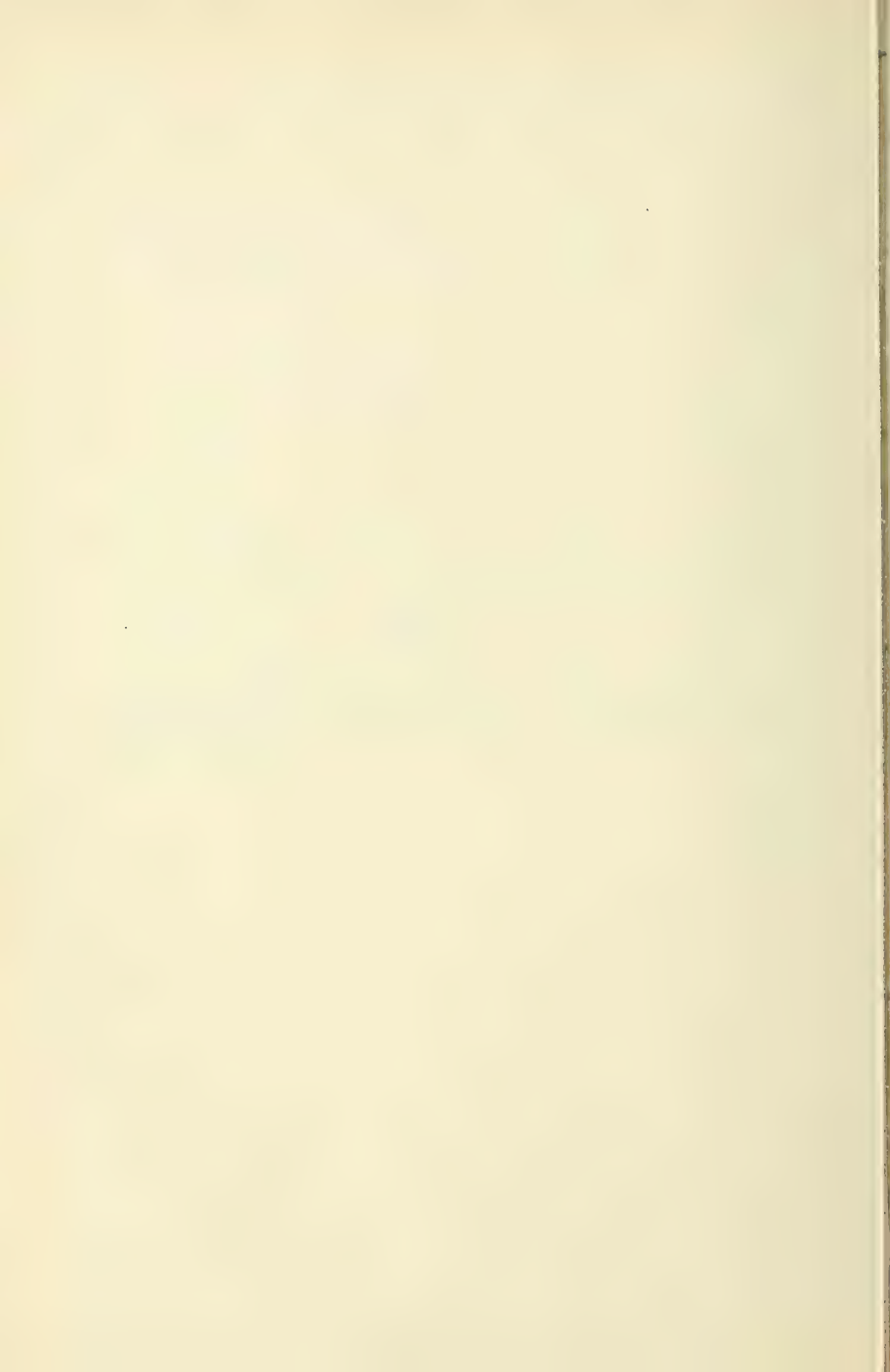
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The
Tenth Annual Meeting



THE TENTH ANNUAL MEETING.

The Tenth Annual Meeting of the American Economic Association was held in Cleveland, Wednesday, Thursday and Friday December 29-31, 1897. The American Historical Association met on Tuesday, Wednesday and Thursday of the same week in the same city. With it two joint sessions were held, the program for the second being arranged by the Economic Association. The various social entertainments of the week also were enjoyed by the members of both associations.

On Tuesday evening a reception was given by Mr. James H. Wade; Wednesday noon the two associations participated in a lunch at the Stillman House, and in the afternoon they were entertained at a tea by Mr. and Mrs. Harry A. Garfield. Thursday's sessions were held in the Hatch library of Adelbert College, and a lunch was hospitably provided the associations in the college chapel. On Thursday evening the association was agreeably entertained by Mr. and Mrs. Samuel Mather.

The program of the meeting suffered from the unexpected and regrettable absence of Secretary Gage, due to the unforeseen pressure of his official duties in Washington, but with that exception it was carried out substantially as planned.

The subjects and the names of those participating with papers or by discussion, follow :

PROGRAM.

WEDNESDAY, DECEMBER 29.

Morning Session, 10.30 a. m.

- I. Address of welcome, by the First Vice President, presiding,
PROFESSOR FRANKLIN H. GIDDINGS, Columbia University.
- II. Discussion: The Labor Bureau Investigation of the Municipal
Distribution of Water, Gas and Electric Light.
By HON. CARROLL D. WRIGHT, Washington, ELROY M.
AVERY, LL.D., Cleveland, PROFESSOR JOHN H. GRAY, North-
western University, and MR. L. E. HOLDEN, Cleveland.

Evening Session, 8 p. m.

JOINT SESSION WITH THE AMERICAN HISTORICAL ASSOCIATION
AND UNDER THEIR MANAGEMENT.

THURSDAY, DECEMBER 30.

Morning Session, 10 a. m.

JOINT SESSION WITH THE AMERICAN HISTORICAL ASSOCIATION.

- I. Rate Making and Taxation, their Resemblance and Difference.
Paper by PROFESSOR ARTHUR T. HADLEY, Yale University.
Discussion participated in by DR. VICTOR ROSEWATER, MR.
H. T. NEWCOMB, PROFESSORS F. W. TAUSSIG, T. N. CARVER,
and A. T. HADLEY.
- II. Discussion: The Relation of the Teaching of Economic History,
to the Teaching of Political Economy.
Led by PROFESSORS HENRY B. GARDNER, Brown University,
HENRY R. SEAGER, University of Pennsylvania, and GEORGE
W. KNIGHT, Ohio State University; followed by DR. JAMES
SCHOUER, PROFESSORS J. M. VINCENT, F. J. TURNER, and W.
A. SCOTT.

Afternoon Session, 3 p. m.

- I. Some Results of an Inquiry on Taxation in Massachusetts. PRO-
FESSOR F. W. TAUSSIG, Harvard University.
- II. Discussion: Methods of Teaching Economics.
Led by PROFESSORS ARTHUR T. HADLEY, Yale University,
RICHMOND MAYO-SMITH, Columbia University, and F. M.
TAYLOR, University of Michigan; followed by PROFESSORS F.
W. TAUSSIG and F. C. CLARK.

FRIDAY, DECEMBER 31.

Morning Session, 10 a. m.

I. Discussion : The Problem of the Reform of the Currency.

Led by PROFESSOR F. W. TAUSSIG, Harvard University, and HORACE WHITE, New York City ; followed by GEN. A. J. WARNER, MR. WHITE, DR. R. M. BRECKENRIDGE, and MR. A. R. FOOTE.

COUNCIL MEETINGS.

A meeting of the Council was held at the Stillman House, December 29, 1897, with Vice-President Franklin H. Giddings in the chair. The report of the Secretary was presented as follows and ordered placed on file :

REPORT OF THE SECRETARY.

The Report of the Secretary is supposed to present a summary of the work of the Association for the year. Interpreting its scope in this way, I have decided to include not merely a presentation of the general work of the Secretary and of the Executive Committee, but also a statement of such official action of the President as has been taken through the Secretary's office. In this manner the report aims to include all such important action of the Association during the year as is not included in the reports of the Treasurer and of the Publication Committee.

The only important action of the President known to the Secretary has been taken in connection with the death of our honored first President, Francis Amasa Walker. A telegraphic invitation to send a delegation of three members to attend the funeral services was received by the Secretary and transmitted by him to

President Adams, who appointed through the Secretary three representatives and alternates. In reply to the formal invitation a letter of thanks for being given the opportunity to testify our regret through personal representatives was also sent by the Secretary to the Faculty of the Massachusetts Institute of Technology. In September the Association was invited to send ten delegates to attend the memorial exercises held in Boston by the Faculty and Trustees. As our President was then in Europe, the Vice-President, Professor Giddings, named the delegates, and five representatives were present on that occasion. The Secretary requests the Council to consider whether it desires to take any formal action regarding this loss we have sustained, and also to instruct him whether the names of deceased officers or members should be removed from the published roll.

Since the last meeting of the Council the Executive Committee has transacted certain business by correspondence and has held one meeting.

The Council's instructions to the Executive Committee to draft and send a resolution of congratulation to Mr. Spencer on the completion of his *System of Synthetic Philosophy*¹ were substantially complied with by the following correspondence :

ITHACA, New York, U. S. A., }
February 12, 1897. }

HERBERT SPENCER, ESQ.,
64 Avenue Road,

Regent's Park, London :

SIR :—At a meeting of the Council of the American Economic Association held in McCoy Hall, Johns Hopkins University, Baltimore, Maryland, December 30, 1896, it was voted

¹ Hand-Book for 1897, 44.

"That the Executive Committee of the Association send a resolution of congratulation to Mr. Herbert Spencer on the completion of his *System of Synthetic Philosophy*."

The Committee feel that a more elaborate expression of interest could add nothing to what is expressed in the vote and, therefore, have instructed me to transmit this copy as evidence of the interest with which American economists welcome the completion of the work to which your life has been devoted.

For the Committee,
W. F. WILLCOX, Secretary.

64 AVENUE ROAD,
REGENT'S PARK, N. W.,
February 23, 1897. }

DEAR SIR:—

Please convey my thanks to the Executive Committee of the American Economic Association for the expression of their congratulations. Sympathy is always pleasant, and sympathy coming from afar especially pleasant, and it is additionally gratifying, when it comes to an invalid who has to spend the greater part of his time indoors. My present state, which is a very low one, must be my excuse for the brevity of this acknowledgement.

Faithfully yours,
HERBERT SPENCER.

The Council's recommendation at its last meeting¹ "that the Executive Committee consider the practicality of so arranging the business of the Association that the membership year and the publication year coincide," was brought up at the next meeting of the Committee and, after debate, it was decided to recommend no action.

Under the Council's authorization at the same meeting² the Executive Committee appropriated "\$700, or so much thereof as may be necessary," to carry on the business of the Association for the ensuing year. It also de-

¹ Hand-Book for 1897, 44.

² Hand-Book for 1897, 44.

cided to hold the Annual Meeting at Cleveland, December 29-31, 1897.

In addition to the preceding decisions reached as results of specific requests or grants of authority from the Council, the Executive Committee in the performance of its ordinary duties has reached three decisions important enough to be included in this report.

It has voted that the printer for the Association may sell through the Secretary to the author at cost copies of the author's contribution to the Association's publications additional to those ordered by the Publication Committee for the Association. It is believed that this privilege to contributors will not be abused in such a way as seriously to decrease the sales of our publications, and that any financial injury the Association may suffer in this respect will be more than compensated by the greater readiness of writers to submit manuscript when this privilege is accorded them.

The Executive Committee has also voted to leave in the hands of the Acting President the arrangement of the program for the Annual Meeting. If this precedent is followed in the future, it will much relieve the Secretary's office, and in his opinion will be beneficial to the general work of the Association.

At its last meeting the Executive Committee recommended that the Monographs be no longer divided into volumes for binding, but numbered successively and paged separately. Action in substantial conformity with this recommendation has been taken, I believe, by the Publication Committee.

The most important business event in the Secretary's office during the past year has been the transfer of substantially all the Association's stock of publications from Ithaca to the warehouse of The Macmillan Co. in New York. These pamphlets had been stored in the basement of a university building at Ithaca and the room was needed for university purposes. Some removal was necessary, and as it seemed probable that the arrangement with The Macmillan Co. would be more permanent than the present location of the Secretary's office, and as nearly all copies of the recent issues of the Association's publications were in the hands of that house, it seemed best to ship all our stock to them. In connection with this change a careful inventory of our stock was taken. Thirty-one boxes were opened, rearranged, packed and shipped. According to our inventory the Association has now in the hands of The Macmillan Co. publications which, at their selling price after deducting discounts, are estimated to be worth \$16,000.

During the past year the Association has spent no money directly for advertising. It has exchanged advertisements with certain journals of a character similar to that of its own publications, and under its contract with The Macmillan Co. "they agree to advertise its publications in their own catalogues and circulars but without general advertising." By an oversight of the company, no mention of the Association's publications was made either in the Trade List for 1896 or in a special list of works on history and economics sent out by them early in the present year. These oversights were called to

the firm's attention and proper advertisement of the Association is made in the Trade List for 1897. A certain amount of mail is still addressed to the Association at the Johns Hopkins University and forwarded thence to Ithaca. This called the Secretary's attention to the fact that neither in the list of 146 national societies contained in the last edition of the Tribune Almanac nor in the list of 39 learned societies in the last edition of the World Almanac does the American Economic Association find place. These omissions have been called to the attention of the editors and assurances received that the name of the Association and the addresses of its officers will be introduced in future issues. The Secretary believes that it would be for the financial interests of the Association to devote some small amount of money to advertising its work, and requests suggestions on the subject from the Council.

The foregoing statements may throw some light upon the fact that the receipts from sales and subscriptions are about \$300 less than they were for the preceding calendar year. Nearly \$100 of this amount is due to a less complete collection of subscriptions by The Macmillan Co. The number of subscribers has slightly increased but the cash returns are about \$100 less. It might be desirable for the Council to request the Treasurer to collect subscription dues as well as membership dues in the future. The decrease of about \$200 in the returns from sales may be due in part to a lack of advertising, but in this connection it should be noticed that no Monograph has been issued by the Association since August, 1896,

and that the Studies apparently have not sold as well as did the issues in their earlier form. The Monograph on the Cotton Industry, which has been printing and preparing since September, will be sent to The Macmillan Co. for distribution the first week in January, and should properly be included in the summary of the year's printing. The Association has printed the Economic Studies bi-monthly, including in all 455 pages, the supplementary Handbook and Report of the Annual Meeting containing 162 pages, and the Monograph on the Cotton Industry containing 378 pages, a total of 995 pages, or about 100 less than last year.

Of the seventy-four life members of the Association a year ago three have died, and as no new life member has been added, the present number is seventy-one. In the list of fifteen honorary members there has been no change during the year. Of the 479 regular members a year ago, forty-seven have ceased to be so, three by death, seventeen by non-payment of dues, and twenty-seven by resignation. Forty-five new members have been added, so that in this category there has been a net loss of two. The subscription list shows a net gain of eight, leaving thus a total net gain of three for the year.

W. F. WILLCOX.

December 24, 1897.

The report of the Treasurer, of which an abstract follows,¹ was presented and referred to an auditing committee. The Publication Committee made an informal re-

¹ *Infra*, p. 53.

port upon its work for the year. The Executive Committee was requested to draft a resolution relative to the death of Francis Amasa Walker and report it to the Council. It was also asked to report upon the question of including the names of deceased officers and members upon the Association's roll. The President, upon the request of the Council, appointed a committee of five to present nominations of officers for the ensuing year. The committee appointed were Messrs. R. Mayo-Smith, F. M. Taylor, W. A. Scott, H. R. Seager and J. J. McNulty. The nominating committee was requested also to report upon the wisdom of reconstituting the standing committees of the Association. The Council then adjourned.

A second meeting of the Council was held at the same place, December 30. The auditing committee reported that the report of the Treasurer had been examined and found correct, and the Treasurer's report was then ordered filed. The following persons were nominated by the committee appointed therefor as officers for the ensuing year and were duly elected: President, Arthur T. Hadley, Ph.D., Yale University; Vice-Presidents, John H. Gray, Ph.D., Northwestern University, Henry B. Gardner, Ph.D., Brown University, W. M. Daniels, A.M., Princeton University; Secretary, Walter F. Willcox, Ph.D., Cornell University; Treasurer, Charles H. Hull, Ph.D., Cornell University; members of the Publication Committee for the term ending 1900, Willard C. Fisher, Ph.D., Wesleyan University, and F. M. Taylor, Ph.D., University of Michigan.

The following persons were also elected as new members of the Council : For the term expiring in 1898, Mr. H. T. Newcomb, Department of Agriculture, Professor G. O. Virtue, Winona, Minn., and Mr. J. T. Young, University of Pennsylvania ; for the term expiring in 1899, F. R. Clow, A.M., Oshkosh Normal School, Professor H. H. Freer, Cornell College, and H. J. Davenport, Ph.D., University of Chicago ; for the term ending in 1900, Rev. Lyman Abbott, New York, G. S. Callender, Ph.D., Harvard University, E. D. Durand, Ph.D., Stanford University, F. H. Dixon, Ph.D., University of Michigan, and Professor J. P. Cushing, Knox College.

The nominating committee further recommended the creation of special committees of five persons each, to be appointed by the Executive Committee, and to have the privilege of enlarging their own membership. The Executive Committee was instructed to appoint three such committees, one on the reform of the currency, one on the twelfth census, and one on the teaching of economic history in the United States. The Executive Committee reported recommending that the printed roll of Ex-Presidents should contain the names of deceased Ex-Presidents, but that the printed roll of honorary members should not include the names of deceased honorary members ; and the recommendations were adopted. On its recommendation also the following minute was ordered to be entered upon the Council records :

In the death of Francis Amasa Walker, President of the American Economic Association during the first seven years of its existence, the members of the Council have lost not only an officer whose reputation and ability were of indispensable aid to the Association through its

opening years, but an associate whose unfailing courtesy, hearty kindness, ready recognition of good work and good endeavor, made him the sympathetic friend of all. Strong in his own convictions and in the expression of them, distinguished in many walks of life, a recognized leader among economists, he yet gave a cordial welcome to new men and new thought, and by his own vigor and earnestness gave a keen stimulus alike to those who agreed with him and to those who differed. The Council desires to put on record its sense of loss in his death and its appreciation of the weighty services he rendered to the Association and to the progress of economic science in the United States.

The time and place of holding the next annual meeting were referred to the Executive Committee with power, and the same committee was authorized to make the usual appropriations for carrying on the business of the Association.

SUMMARY OF THE TREASURER'S REPORT, 1897.

CHARLES H. HULL, Treasurer,

*In account with the American Economic Association
for the year ending December 23, 1897.**Debits.*

Cash on hand as per last report	\$1,083 33
Subscriptions and sales,	
The Macmillan Company	\$783 03
Swan Sonnenschein & Co.	42 34
W. F. Willcox, Secretary	7 84
	833 21
436 $\frac{1}{3}$ annual dues	1,309 00
Exchange	06

Credits.

Publication expenses	1,178 33
Secretary's expenses	461 24
Treasurer's expenses	54 50
Expenses of ninth meeting	43 33
Cash on hand December 23	1,488 20
	\$3,225 60
	\$3,225 60

Examined and found correct.

[Signed]

G. K. HOLMES,	} Auditors.
J. W. CROOK.	

ADDRESS OF WELCOME.

In assembling for the tenth annual meeting of the American Economic Association we have to regret the absence of our President, Professor Henry C. Adams. The pleasant duty therefore falls to me to welcome, in the name of the Association, all of its members who are here present, and, as well, all others who are sufficiently interested in the subjects which are to be discussed in our sessions to favor us by their attendance. This is an open meeting, and all who care for economic studies are cordially invited to share in our proceedings.

Since our last meeting the Association has sustained a grievous loss in the death of our beloved and honored first president, General Francis A. Walker. In his too brief life President Walker did more than any other American to make political economy an influential and a sincerely respected branch of knowledge. In the presence of those who are gathered here this morning I need not recall his contributions to the science of our allegiance, or his services to this Association. I need only say that to us who knew and loved him he was more than an economist. Ever kind, and helpful, and generous to his colleagues, and to every student who sought his counsel or his aid, he was more than a great economist, a great statistician and a great author, he was a great man.

Our program, as you have doubtless noticed, is emi-

nently practical. While questions of theory will have their place in the discussion of each subject, the subjects themselves are matters closely associated with the welfare of the people. In this respect the program reflects a tendency which all readers of the most recent economic writings must have observed. Political economy is swinging back to a renewed attention to practical or business affairs. Much attention has been given in recent years to those refinements of theory which have brought into familiar use such terms as "subjective utility," "subjective cost," and "subjective value." Americans have contributed not less than their brilliant Austrian contemporaries to these studies. This work, in which so many of our younger men have won a worthy distinction, was very necessary work to do. The psychology of economic phenomena had to be elaborated by economists because the psychologists themselves had neglected that part of their field. Now that the work has been done, however, there is evidently a growing conviction that the theories which have resulted are, in a strict classification of the sciences, a division of psychology, and as such are data for political economy, and that political economy itself will probably continue to find its true task in the scientific study of that objective world of business affairs which enlisted the interest of Adam Smith, Ricardo and Mill. In the future as in the past, the economist will be chiefly occupied with the eminently practical problems of production, exchange and distribution; of capital, price, rent, interest, wages and profits.

With many other members of this Association I share the opinion that we should take a more prominent stand on questions of public policy, and make an increased effort to bring before the public a strictly scientific view of such great matters as the currency and taxation. We must not impose upon ourselves a creed, or promulgate dogmas; but we should make it clear to the people that there is a vital difference between scientific and unscientific views of those great subjects. I therefore hope, and I express the hope, that before this tenth annual meeting adjourns we shall take steps to make the American Economic Association an increasingly powerful influence upon public opinion.

ABSTRACTS OF PAPERS AND DISCUSSIONS.

DISCUSSION.—THE INVESTIGATION OF MUNICIPAL AND PRIVATE DISTRIBUTION OF WATER, GAS, AND ELECTRICITY, CONDUCTED BY THE DIFFERENT BUREAUS OF STATISTICS OF LABOR IN THE UNITED STATES.

LED BY HON. CARROLL D. WRIGHT, HON. ELROY M. AVERY AND PROFESSOR JOHN H. GRAY.

Mr. Wright :—It is not my purpose, nor am I expected, to discuss the merits or demerits of municipal ownership as compared with private control of water, gas and electric light plants. Such a discussion would be important, but must be left to others. My own duty on the present occasion is simply to outline the methods and progress of an investigation undertaken by the various bureaus of statistics of labor of the several states and of the United States Department of Labor.

It is well known that in foreign countries cities have gone much further in the direction of municipal ownership or control than has been the case in this country. In the United States we have no line of statistics bearing upon either the census of municipalities controlling their own works or the cost of production under the two methods,—municipal and private control,—or the cost to the consumer. Such a line of statistics, however, would be of the greatest value in discussing the

merits and demerits of municipal as compared with private ownership and production. So in June, 1896, the chiefs and commissioners of bureaus and departments of labor statistics in the United States, at their annual convention, held in Albany, decided to undertake a general investigation relative to the municipal distribution of water, gas, and electric light. A committee was appointed to prepare schedules of inquiry, but the first schedules prepared were found to be inadequate, and it became necessary to revise them. The revised schedules are somewhat elaborate, but no more so than the importance of the investigation warrants, and we now hope to get valuable information. The collection of information is practically under the charge of the United States Department of Labor, working in co-operation with the various states, so far as the means of the state bureaus will allow. I am glad to say to you that the investigation is being carried forward in several states, with encouraging results and it is hoped to have the field work completed sometime next autumn. Many of the state offices are very poorly equipped as to means, but they work with us so far as possible. The force engaged has received very valuable aid from private corporations in the collection of data.

The great question, Which is better for the consumer, private or municipal ownership? is one in which the state and federal officials conducting the investigation have no interest beyond the securing of facts. They may be interested in the results, but I mean that in the conduct of the investigation they can have no in-

terest in the principles involved. The statician must be unbiased and cold-blooded in his investigations.

It will be a very easy matter to ascertain the census of establishments. All persons, those in favor of or opposed to municipal ownership, will be glad to know to what extent municipal ownership has been carried in this country. At present this cannot be readily ascertained. The first point of information, therefore, in the investigation under consideration will be the census of establishments.

Another feature of the investigation in which there cannot be much difficulty is that of ascertaining the difference in cost to the consumer. Even where private corporations are unwilling to furnish trustworthy information, it is an easy matter to obtain correct data as to cost of supply. Consumers everywhere will furnish this information. The bills of companies will be the verification of statements. One difficulty in this connection lies in the fact that private and municipal plants, as a rule, do not compete one with the other. Here and there conditions of actual competition between private and municipal plants may be found ; but the facts as to the price of products will be practically comparable when obtained from neighboring localities.

The chief difficulty in the investigation relates to the cost of production. To secure this the expert is obliged to inquire very closely into all the elements that enter into the cost of producing water, gas, or electricity. Under municipal control there is a complication which arises at once, on account of the relations of the

municipality to its citizens. For example, in many cases the salaries of officers in charge of the municipal plants are borne on the general pay roll and are not charged up to the cost of producing, water, gas, or electricity. Still, I think the questions on the schedules are so arranged as to remove some of these difficulties. Of course, cost of production in a municipal plant should comprehend fully all charges, whether of officers or otherwise, necessary to the production. Again, difficulties arise under municipal control on account of the general methods of book-keeping, but it is hoped all such difficulties will be fairly overcome.

As might be supposed, the managers of municipal plants are more willing than private corporations to report the facts connected with their works, but they are less able to. The managers of private corporations are more competent, but less willing. Nevertheless, I believe that there will be a sufficient number of private corporations willing to furnish the fullest information as to their cost of production. Managers are beginning to understand that their interest with the public lies in furnishing the required information. There are several influences leading to this conclusion; as, for example, a manager of a great western corporation decided, in the first place, that he would not furnish the information as to cost of production, but on studying the question he became interested, for he saw that it would be to his interest to be able to announce to the public that the private consumer was being taxed to make up for the decreased price under contracts with the municipality.

Where the price to the municipality is nominal, the state of affairs should be borne in mind, and the manager of the private corporation understands well the benefit which the publication of the facts would be to his own works. Neither gas, nor water, nor electricity can be made for nothing, and there may be in places a tendency to make the tax-payers pay part of the cost of production when the product is used for the benefit of the municipality, as well as to make a special tax through higher price.

Another difficulty in the investigation is to ascertain how far private corporations are supplying municipalities, and how far municipal plants are supplying private consumers. Such matters will be ascertained through the investigation now going on.

It would take too much time to enter into all the details of the investigation, as disclosed by the schedules. These schedules are obtainable, and one can study them for himself. My general statements are, as I suppose, simply to serve as a basis for discussion. Having given these, I may say that I believe the investigation will furnish much valuable information along many lines, not only as to cost of production, price to the consumer, and the extent to which municipal ownership has been carried, but also facts relative to franchises and other matters that will help us to understand many of the elements entering into this question. At the present time, if a municipality is discussing the question of putting in gas, water, or electricity, and wishes to decide between private and municipal control as an economic measure,

a committee must be sent out to collect information. Owing to politics and other foreign influences, the committee is quite likely to return as confused as at starting it was ignorant of the facts. As a result of this investigation, I believe there will be brought into existence a great body of facts to which all such committees can turn for general information. The report cannot satisfy all inquiries as to the desirability or feasibility of introducing private or municipal plants, because there are elements other than those which can be brought out by an investigation; as, for instance, it is alleged that private capital does not feel warranted in building works in a small city, and that it is here only that municipal ownership is of the greatest advantage. Indirectly, of course, the investigation will bear upon such a question, as it will give the facts for large and small places as well; but in all the inquiries the greatest difficulty lies, perhaps, in the nice adjustment of the different elements of cost of production and supply.

Hon. Elroy M. Avery : I desire to express gratification at the undertaking of this work by professional statisticians, but have serious doubts as to the conclusiveness or the satisfactory authenticity of the results that will be attained. Someone has saucily said that "statistics are like sausages, in that their value depends upon who makes them." As to the distribution of water, I suppose the only question now worth discussing is how small a town must be before private ownership becomes desirable. I suppose that in the case of New York and

Chicago and Boston and Cleveland and cities of that class, and even in the case of a city like Cincinnati, no one will seriously argue against the preponderating advantages of municipal ownership and operation of the water-works. As it is not worth while to discuss the question in its application to large cities, and as I know nothing of its application to small cities, it would not be creditable to me or complimentary to you, for me to detain you a moment further with remarks upon that phase of the topic under consideration.

As to the problems of municipal distribution of gas and electricity, I have had some experience that I think entitles me to entertain some pretty definite notions. For five years, I was a missionary of light—electric light. Subsequently, I was chairman of a joint committee of the Cleveland city council on the investigation of the cost of distributing gas in this city. I was also chairman of another councilmanic committee on investigation of street railways in this city. Still later, I was chairman of a joint committee of the Ohio legislature on the investigation of the emoluments of the officials of this county. I mention these things not, of course, for the sake of prejudicing my audience against me, but for the sake of showing that I have had a chance to learn something of the difficulties of certain investigations in the interest of the people. Any Cleveland reporter will tell you that when I am at the head of such a Lexow commission, the papers get a plenty of what they call “hot stuff.” But I have reformed; I have abjured partisan politics and I go out of office next Monday morning forever. So, hear me for my cause.

When we began looking into the cost of producing gas in this market, the two gas companies were selling their chief product for a dollar per thousand cubic feet, and their bye-products for all they could get for them. Before we got through with them, they were glad to make a ten years' contract to supply city and citizens with gas at eighty cents per thousand and to pay into the city treasury five per cent. of their gross receipts. Under the operation of this last mentioned clause, and from the profits of eighty cent gas, they have paid into the city treasury, where it now is to the credit of the City Hall fund, more than a quarter million of dollars. Our committee was authorized to send for persons and papers; our subpoenas were served by the deputies of the sheriff; the county jail yawned for recalcitrants; but we did not get much that we wanted directly from the officials of the gas companies. The president of the larger of our two gas monopolies, one on each side of the river, took the books of the company out of the keeping of the secretary and was called between two days to Arizona; we soon found that the secretary and the superintendent knew less about the gas industry in this community than the janitor of the chamber of commerce. They are both amiable gentlemen and personal friends of mine, but they ought to be ashamed to draw such salaries as they do without understanding something of the business that they have in charge. Perhaps they do now.

More than one director of these gas companies stated under oath that it was not possible to make and sell gas

in this market for less than a dollar per thousand. But the fact that they have actually done it for six or seven years without any symptoms of individual or corporate bankruptcy or retrenchment shows that good men and good business men may be mistaken, and that orthodox piety or extraordinary commercial and political sagacity is not necessarily proof against deception by wicked partners.

The statistics to be secured by these bureaus will fall far below the conclusiveness suggested by the distinguished speaker who has preceded me, unless they are gathered by virtue of official authority to dictate methods of book-keeping, and to examine accounts and to force the giving of information. The managers of these franchise-enjoying corporations do not admit the claim, that they are in partnership with the municipality and that the municipality, as a partner, has a perfect and equal right to a full knowledge of the business. I have no prejudice against corporations, and believe that a well regulated monopoly may be desirable. But when the franchise-enjoying corporation forgets or denies its subordination to the greater corporation from which it derived the privileges and powers that make it prosperous and sometimes dangerous, the situation can not long continue without change. I desire to avoid offense ; I hope that what I say will not be offensive to any one. The managers of these corporations are not bad men, as the business world goes ; the trouble is that they do not recognize the fact that the public has any right to ask questions about what they consider their private business.

Their natural resentment at what they consider an impertinent interference is reinforced by their desire to avoid the competition that would be caused by a disclosure of exorbitant profits. Under such conditions, and in the light of my own experience, I must beg to be excused from giving unreserved confidence to the accuracy of the information voluntarily given by parties thus environed to the polite inquiries of statisticians. Until the hand of an authority that they must respect is laid upon them, I fear that we must interpret their stories of the cost of production and of small profits very cautiously, and strive for discreet legislation that will force them to tell the whole truth—in the courts if necessary.

Professor John H. Gray : I propose to confine my discussion to that part of the general topic assigned with which I am most familiar, namely, the gas supply. It is interesting to note in passing that the subject is the same as that of the first scientific monograph published by the Association, and is identical, also, with that of an investigation undertaken by a standing committee of the Association about ten years ago. It further coincides with one of the articles in our original platform or declaration of principles. That article affirms that we believe in the development of economic science and “we look not so much to speculation as to an impartial study of actual conditions of economic life for the satisfactory accomplishment of that development.” A decade has rolled by since that declaration was made. Meantime,

the gas supply of nearly all important points has passed into the control of a few great syndicates, and the agitation for public ownership has taken stronger hold of the popular mind. This agitation rests upon a keen sense of wrong, and not on any scientific basis. For the statistics of the gas supply do not exist, and the gateways to the history of the industry are closed to the whole outside world by the orders of the directors of these syndicates. As yet, we have taken no effective steps to give this declaration living force. The investigation referred to had to be given up because of the expense involved and the acknowledged inability of the committee to get at the facts. All later attempts at private investigation have met with a like fate, and for the same reasons.

The movement for public ownership demands a scientific answer, but the data for such an answer are still lacking; unless indeed we are ready to declare it a scientific principle that the burden of proof is always upon him who advocates any change whatever in economic or governmental policy. This movement has long since passed the point at which it can be stopped by any *a priori* arguments based on the theory of government. It must be met, if it is to be met at all, by a scientific demonstration of the probable economic loss from public ownership. Such demonstration can come only from a statistical comparison of the results under the different systems of management. Both parties to this controversy seem to ignore the fact that the necessary data for such a comparison do not exist. The iso-

lated facts of this industry are unknown not only to those most prominent in public discussions, but, even to many of those actively engaged in the industry.¹ Furthermore, in the present state of suffrage, popular opinion, legislation and accounting (both corporate and municipal) it is impossible to bring them to light. We cannot get at the disjointed facts now on record. But if we could set into immediate operation investigations, which could, and would, publish all the accounts of the companies, the result would be such a chaotic aggregation as would be of very indirect service for the discussion suggested.

But a most important social and economic interest is here at stake, and if we cannot at present discuss the economic problem involved for lack of data, we can discuss the necessity and the desirability of getting at such facts as do exist, and of reducing them to a basis suitable for scientific use. It appears, then, that much preliminary work of a political, educational and administrative character must be done before the material for a strict economic discussion is available.

The great practical problem before us to-day is, how to get the suppliers of gas to keep their books and accounts in an honest, uniform, intelligible and scientific manner, and then to give these accounts thus perfected to the public. Until we can get at the accounts as they are kept, and until we can compel them to be kept properly, we shall never be able to prevent corporate abuses,

¹ Cf. F. E. Barker in Proceedings of Association of Officials of Bureaus of Labor Statistics, Twelfth Convention, 1896, p. 114.

or to discuss the economic advantages or disadvantages of either public or private ownership. The need of such preliminary work is as great in regard to the publicly owned works as in the case of the works owned by private corporations. The accounts of municipal works now published are so imperfect and inaccurate as to be useless for scientific comparison. Is it reasonable to suppose that returns made for the purposes of the proposed investigation from the same data will be any more accurate than the reports now published? The idea seems to me wholly untenable. We might just as well admit once for all that the methods of accounting by these municipal plants (with the exception of those in Massachusetts of which I shall speak later) are such as to make it impossible, even for an expert, to find out the more important items, such as the cost of manufacturing or distributing, or the amount of investment or of depreciation. If the accounts of any such plant were kept at any one time with absolute honesty and accuracy, the frequent changes of date for beginning the fiscal year, together with the frequent changes of officials and methods of book-keeping would result in utter confusion in the returns for a given plant, and would render comparison of the accounts for different plants impossible.

The selling price of gas at such plants is usually known, but the data for determining the cost to the consumer may be wholly lacking because sufficiently accurate and frequent tests of the illuminating power and purity of the gas are not made and recorded.

In the case of the works under public ownership in

Massachusetts, the state commission, established in 1885, has required a uniform fiscal year, and has done much by patient, wise and long-continued effort to educate the municipal authorities up to uniform, intelligible and scientific accounting and reporting. But even here the cities and towns still have much to learn in these particulars. The commission has always maintained that the imperfections referred to above have heretofore prevented fuller publication of returns from such works, and has promised us more extended publication in its forthcoming report.

But let us turn our attention to the much larger portion of the field occupied by the private corporations. Here we find substantially all the evils and imperfections mentioned in connection with the public works. In addition to all these, we find the insurmountable difficulty that facts as recorded in the books of the companies, are regarded by those in charge of them as the legitimate trade secrets of a strictly private business. Of course, this view does not conform to the economic and social needs of our age. Speaking broadly, however, if we leave out of view some very recent statutes of Massachusetts, we may say that the law supports this view¹ and that it is a logical outcome of the past dealings of the American people with this industry. Intrenched behind this belief, and the decisions supporting it, the companies, fearing competition if the facts become known, have resisted successfully so far every attempt on the part of scientific investigators, rival companies, agitators, promoters,

¹ Cf. *Commonwealth v. Lowell, (Mass.), Gas Light Co.*, 12 Allen, 75.

city councils, legislative investigating committees, state labor bureaus, the courts of justice and all the rest of the world to get at the facts.

Scientific opinion is unanimous in the belief that gas in any given locality should be furnished by a monopoly, and that all unregulated private monopoly sooner or later leads to oppression and abuses. The obvious conclusion is that regulated private monopoly or public ownership are the only alternatives. But the average American citizen makes no distinction between regulated and unregulated monopoly, and has but little faith in the ability of our government to regulate any private interest. He therefore regards the gas company as an actual, but not a necessary, monopoly, and is constantly in a hostile attitude towards it. His chief weapon is legislation looking towards the reduction of the profits of the company, without knowing what those profits are at present. The result is perpetual warfare and competing companies. The business has been so profitable that the managers have preferred buying off rival companies to making their affairs known to the public. This has opened the way for wholesale blackmail on the part of corrupt legislators, counsellors and promoters. Consequently rival companies are created solely for the purpose of selling out. The hope of continued high profits makes the companies want to keep their accounts secret, while a blind belief in competition on the part of the public, and, where that fails, a belief that injury or threatened injury to the company will make it come to terms advantageous to the public, prevents any rational attempt to

get at the facts. Much abuse has been heaped upon the companies for their alleged unfairness in dealing with the public. The fact is that the men in charge of the companies are no worse and no better than other men. It would probably be easy to match every outrage perpetrated by the companies, by one committed by the public against the companies.

Not all our states reserve the formal right of ascertaining what private corporations do by an actual inspection and audit of their books, or require by statute that corporation books be kept in such a manner as to render such audit of any practical value where it exists. The frequently recurring statutory provision requiring the corporations to make sworn returns is degrading, as well as useless, where no right and practice of verifying such returns by actual inspection of books exist. Where the right of public audit nominally exists, the provision usually becomes merely a dead letter because of the general weakness of our state governments and the universal hostility of the companies to the enforcement of the right.

Massachusetts alone has actually succeeded in finding out what her private corporations do. But in the case of the gas companies this was possible only under a tacit agreement between the companies and the commission that the information obtained should not be made public. The commission has been severely criticised for not publishing the returns made to it by the companies. This criticism seems to me without any just foundation. The legal right of the commission to make

such publication cannot be questioned. But the publication would, in my opinion, have destroyed the usefulness of the commission, and would have prevented it from accomplishing what seems to me not only the best work the commission has ever done, or could have done, but also the most important work yet done in the United States in the line of controlling private corporations. The commission, at the very start, recognized what the whole American public must learn before the corporation problem is solved—I mean that no reforms were possible without the consent of the corporations. The result was that this commission, which was clothed at the same time with the widest powers, and also the widest discretion, set about reforming the book-keeping, accounting, reporting, and industrial management of the companies. In this good work the companies heartily coöperated, with the distinct understanding that no publication of the individual returns would be made to the possible detriment of the companies, and that, so long as the management was honest and capable, and profits within the bounds of reason, the companies would be defended by the commission from competition and raids. The result has not been all that could be desired, but has, apparently, been all that could reasonably be expected under all the circumstances. Inter-state complications and outside speculation under the protection of the laws in other states, have brought enormous difficulties to the work of the commission. But it is not too much to say that, for the first time in America, the managers, at least, of the industry have been induced to

put their affairs in order, and are able themselves to say what it costs economically to make and distribute gas under normal conditions. Vast amounts of money have been saved the public by the prevention of so-called competition, for which, of course, the public always ultimately pays. Over-capitalization of existing companies, while not absolutely abolished, has been greatly checked, and in some cases actually reduced, to the great advantage of the public. But, better still, more careful industrial management has been developed. At the same time much valuable scientific information has been given to the public, while all the facts in the case have been put into scientific form, and have forever passed from the exclusive control of the interested parties—the companies. It is true that the greater part of this valuable information is yet locked up in the State House at Boston. But some day, when both the companies and the public become a little better educated, the data will all be published. Meantime the indirect effects of the reports of the commission and of officers and employés of the Massachusetts companies passing from these well managed companies to those outside the state can scarcely be estimated.

The attempts to settle the relations of these companies elsewhere by penal statutes, and, by compensation clauses and contract at private law, have always proved futile, and from the nature of the case must continue to do so as long as a knowledge of the facts of the industry is all on one side. This is doubly true when that side consists of a few shrewd men who are able

to combine to carry out a definite policy. The popular theory grants the advantage of the companies, but falsely ascribes it to the superior wickedness of those engaged in this industry. This exclusive knowledge of the facts enables the gas interests to disprove or at least cast doubt upon every claim advanced for compensation to the public. This is done, too, without giving enough of the secrets of the company to the public to give it an advantage in future negotiations. The temptations under which such a system places those engaged in the industry are apparent, and are much greater than any civilized government ought to place upon its subjects. In this perpetual warfare, each party tries to get all it can from the other. The morals, manners, and methods but not the strength, of the parties are substantially the same.

If it be true that the companies are at present stronger than the state, it follows that compromise with them is the only rational method. But is any compromise in anywise favorable to the public possible? It follows from what has already been said that contract at private law is no solution of the problem. The conditions of a fair contract are destroyed by the unequal positions of the parties. Any contract under such conditions into which the companies may be temporarily forced, will be either evaded or modified at the instigation of the companies, as soon as it proves unfavorable to them. There is but one solution, then, if we are not to rush into the experiment of public ownership without any facts on which to justify the undertaking of such an ex-

periment. That solution is monopoly regulated not by contract but by the sovereign power of the state, and, in the name of the state. The road to such control lies through public inspection and effective audit. That audit can be made effective only by the consent and co-operation of the companies. To gain that consent we must grant the companies compensation in the form of undisturbed monopoly, and, for the present, high profits. For an ultimate reduction of profits below what the companies are now striving for, is inevitable under such a system of public audit. It will be said that the companies will oppose such legislation as bitterly as they have opposed all previous attempts at regulation. That such legislation to be successful must proceed tentatively, slowly, and, with a provision for high profits for some time to come, is perfectly plain. But most of the larger gas properties are managed speculatively, and, besides, the interested parties are beginning to feel that some concessions to popular demands are inevitable. Under these circumstances, those in charge of the interests are ready to compromise in good faith along the lines suggested. For, although they foresee, as a result of an honest and efficient public audit an ultimate reduction of profits, they much prefer that such a reduction, if it must come, should take effect at some indefinite future time, and after the present managers have had time to forecast it, and consequently to adjust themselves to it, rather than to submit to expropriation or a sudden and immediate reduction of profits as a result of hostile legislation.

The duty, then, of the disinterested student in the present crisis is to attempt to educate public opinion up to this method of procedure. But this means a very gradual reform, and that is exactly what the average citizen will not at present tolerate. His program, especially if he be in politics, is always an immediate reduction of charges to the public, with a corresponding lowering of profits. In this he demands an impossibility. Such an attitude towards the companies doubtless tends to lower the possible profits of unregulated monopoly; but, at the same time, it tends to keep the economic cost of the service high. This is the point of vital interest to the public welfare.

It follows from what has been said that rational, scientific, discussion of the advantages or disadvantages of public ownership is at present entirely out of the question. The facts for such a discussion are wholly lacking. The preliminary work, referred to above, must be done before that question can be passed upon. But when this preliminary work of getting at the facts shall have been accomplished, it is not impossible that the mere light of publicity will destroy the more important abuses, against which the agitation for public ownership is aimed. It may, in fact, be seen that the present evils result largely not from the form of ownership, but from this secrecy and the evils growing directly out of it. If that should prove to be the case, the occasion for public ownership will disappear with the secrecy.

In the light of these considerations, what can we expect from the proposed investigation into the facts of

this industry under the direction of the United States Commissioner of Labor. I am unable to share completely the optimistic hopes of that distinguished official in regard to the positive information likely to be obtained. But as an important and necessary step in the process of education outlined above, I welcome the investigation. I have no doubt that some positive results of value will be attained. I am sure, also, that if the result were to be wholly negative, the effort would be worth all its costs.

Mr. Wright: In answer to the remarks of the various gentlemen, which remarks have interested me greatly, I would simply say that I have had some experience in getting at the cost of production. So far as the United States Department of Labor is concerned, it is not expected that much information will be obtained from the officers of the companies through correspondence. This method generally proves a failure. We send experts to examine the books, and in all instances it is found that there are many private corporations patriotic enough to open their books to the Department's experts and to help in every way possible. Of course, there will be no difficulty in getting at the books of municipal plants. So, even if the difficulties are as great as outlined by some of the gentlemen who have spoken, I assure you they have been anticipated and, so far as possible, overcome. The investigation will be a success; if not, it will be the first failure of the Department. If it is a failure, it must be in some respects a success.

Mr. M. S. Greenough :¹ I did not intend to make a speech and it is owing to a betrayal of confidence that I do so. It is true that I was connected with the establishment of the Massachusetts Gas Commission. I was at that time in the service of the Boston Gas Light Company. The commission was created too late to prevent the introduction into Boston of the Bay State Company and its stock watering manœuvres, but for the state at large it has been an unquestioned benefit. It not only lifts the veil from the mysteries of gas making, but it affords a remedy to the consumer against injustice, of protection to the companies against piratical raids. Give the companies assurance that they will not be interfered with in the legitimate prosecution of their business and those of them who are already acting fairly will be glad to show their figures, and those who are not can be compelled to do so. To ask them, however, in their unprotected condition to go into any details which may be used against them afterwards, would be only waste of time. As to municipalities supplying gas, while it is theoretically a possibility, practically it has been a failure in this country for reasons which I need not go into. I think it will be some time before any city or town in Ohio will sell its gas at seventy-five cents as we do here, and show a profit in the transaction.

¹ President of the Cleveland Gas Light and Coke Co.

RATE-MAKING AND TAXATION.

ABSTRACT OF PAPER BY PROFESSOR A. T. HADLEY, YALE UNIVERSITY.

In times past we distinguished taxes, which were payments to the government for public purposes, and prices, which were payments to individuals for specific services. To-day there is coming into increasing prominence an intermediate form of payments which we may call *rates*. Charges made by the post-office for carrying letters, by the municipality or by the water company for water service, charges made by the telegraph company for messages or by the railroad company for shipments, belong to this class. In one sense they are payments for specific services; if you are ready to do without the service you do not have to pay the charge. In another sense they do not belong to this category; for they are contributions to a mass of general expenses rather than compensations for specific expenses incurred in each individual service.

Rates are like taxes in being contributions for a public purpose. The law recognizes this public character by allowing the railroads or water companies to condemn land. Just as the members of a local group are taxed by the municipality for the general expenses of running the city, so the members of an industrial group are taxed by the railroad administration for general expenses of the railroad. It makes very little difference with the character of the transaction whether the railroad be owned by a private corporation or by the state. The difference between state and private roads is not

nearly so much in their traffic management as in their financial relations.

A rate however is unlike a tax in at least one very important particular. To avoid a tax you must change your abode; to avoid paying a rate you need only dispense with the receipt of the service. If I do not wish to pay the postage, I need not send the letter. This voluntary character of the transaction makes the rate, from the consumer's standpoint, conform to the law of marginal utility, although the collective quality of the expense involved, from the producer's standpoint, removes the rate largely or wholly from the operation of the law of marginal cost. It is a charge based on benefit if looked at in one way, and a tax based on ability if looked at in another way.

Perhaps the most important distinction between rates and ordinary taxes is the method adopted for ascertaining ability. It is an experimental one. Reduce the rates and see if the traffic expands sufficiently to make good the loss. If it does, then the old rate was too high for the rate-payers' ability. This is the principle of charging what the traffic will bear; and when applied it is probably a better method of adjusting burdens to ability than any other.

But with agents as we find them it is not certain to be applied intelligently. Hence the legitimate demand for rate regulation. The corporations' resistance to this legitimate demand often precipitates a conflict which leads to a struggle for reduction of profits—a very much less intelligent procedure. Examples of its evil

effect are seen in the pooling clause of the Interstate commerce act, and in the unintelligent demand for state ownership of many monopolies which are probably better off in private hands.

We are accustomed to speak of our great industrial monopolies as private property affected with a public use. It would perhaps be more truthful and more salutary to invert this conception and consider them as public functions delegated to private management. We should not think of rate regulation as an encroachment on private rights of private property, but of rate-making as an extension of its functions.

Discussion.

Dr. Victor Rosewater : While I do not want to take direct exception to what Professor Hadley has said, I think there are two or three points which have not been brought out in their proper light. With respect to the voluntary character of rates, and the involuntary character of taxes, the distinction is by no means so sharp as Professor Hadley would lead us to believe. He mentioned special assessments as resembling rates in their voluntary character. Although historically special assessments were originally voluntary payments, they are so no longer. Formerly when a sidewalk was ordered laid, the assessment was levied only in case the owner of the abutting property did not care to build it himself or have it built by private contract. Now, in most American cities, the sidewalk is built and the expense charged against his property whether he wants the sidewalk or not and whether he wants to pay or not.

The same is true with reference to certain rates. We are told that if a man does not want to pay two cents for the transmission of a letter he need not send the letter. But this is not true. The post-office looks at the sender of a letter entirely impersonally. If the letter is sent, two cents must be paid. The sender of every letter must pay two cents. There is nothing voluntary about it. He is even prohibited by law from sending it in any other way. It is a little different with express rates. There the parcel may be sent through one of several competing express companies, or perhaps by post, and if the sender is dissatisfied with the rate he may try elsewhere. Illustrations might be multiplied indefinitely.

If we extend our survey a little, therefore, we discover that it is rather the exclusiveness or non-exclusiveness of the service that determines whether the rate resembles a tax or a price. Where there is complete or approximate monopoly, the charge largely resembles a tax ; where there is competition, it resembles a price. The question, then, it seems to me, becomes this : Shall the rates be fixed by experiment of the government itself, or by experiment of private individuals or corporations free from all restraint, or by experiment of private individuals or corporations subject to regulation by public officials responsible and accountable to the public ? I do not care to enter into a discussion of this broad subject here, but it seems to me to be the vital question to which this discussion is really preliminary.

Mr. Harry T. Newcomb : According to Professor

Hadley's paper and the great value to which it is entitled, it seems to me desirable to call attention in this place to some of the obstacles to the application of scientific principles to railway rate-making in this country and at the present time. Systematically and profitably to carry out any satisfactory principles of rate-making, it will be necessary to be able to deal with the railways of the country, or at least those in certain extended regions, practically as with a unit. This can not now be done. Seven or eight hundred boards of directors employ one knows not how many officials of varying grades, each endowed with more or less independent rate-making authority. The rates of one line, adjusted profitably and so far as its own patrons are concerned equitably, may and frequently do make the similarly adjusted rates of another carrier which transports goods that compete in a common market relatively unreasonable and unjust. There are also conditions, one need not say how frequent, which make it desirable to extend transportation facilities to regions which cannot for a time furnish traffic in paying quantities. In the postal service this is accomplished by charging the balance of expenses over receipts of the sparsely populated districts upon those in which population is more dense and the service consequently more profitable. How far a similar practice would be justified in connection with railway transportation is problematic, but it is certain that it is desirable in many instances to extend transportation facilities to regions in which they cannot be secured at all through independent corpora-

tions, or, if obtained, are supplied under speculative conditions that unreasonably enhance their cost,—a cost, be it understood, which must finally and inevitably be recompensed by the public in charges for railway services.

These obstacles are accentuated by anti-pooling laws, but no pooling arrangement yet proposed will entirely eliminate them, as nothing less than the practical unification of railway facilities can accomplish that result.

Professor F. W. Taussig : Professor Hadley, with his usual acuteness and ability, has called attention to the mode in which a series of charges or payments, some made to the state, some made to corporations or even to private individuals shade into each other by slight gradations ; and he has suggested a point where he would draw a significant line of division. The fundamental question is, how far the likenesses on either side of the line outweigh the differences, and which sets of payments on the whole most resemble each other. I think I should be disposed to draw the line at a different point from that suggested by him. In some cases the state gives : in other cases the state sells. When it sells, (say, water, or postal services,) its charges doubtless are mainly analogous to those of a railway company which sells transportation services. But when it gives,—for example, when it furnishes schools gratis, the conveniences of public highways gratis, police protection gratis,—the charge by way of taxation seems to me fundamentally different. When I say that it gives, I

mean, of course, that it gives to the individual beneficiary, asking no questions as to whether he as an individual has paid or has not paid.

Obviously this is not the situation when two cents is charged for carrying every letter, and so much a year for the water furnished by a city. In these cases we have prices, which seem to me very different from taxes. Railway rates and other corporation charges doubtless present many points of resemblance to public prices, but they seem to me fundamentally different from taxes.

Another point may be mentioned. No doubt it is true that a railway rate is not regulated by the cost of the specific service. But this seems to me to be explained not by the fact that railway charges are analogous to taxes, where also there is no precise correspondence of cost with price, but by the fact that a railway's expenses are so largely joint expenses. The explanation of the phenomenon lies in the character of railway operations and the impossibility of apportioning expenses to specific services, rather than in the analogy of a railway to a public body levying taxes. To refer to an illustration which I have already used in print: the different articles which we get from cattle,—meat, fat, hides, horns,—are produced at joint cost, and therefore no one of them is sold at a price regulated by the specific expense of producing it. It does not follow, however, that the price of beefsteak is regulated by the same principles as those which underlie taxes.

Professor T. N. Carver: We as economists are so ac-

customed to emphasize the difference between competition price and monopoly price that I suppose one takes his life in his hands when he ventures to protest against such a distinction. Yet at the risk of being a voice crying in the wilderness, I insist that there is no real difference. We are told that the cost of production fixes competition price and that monopoly price is determined by the principle of largest net returns. But, in reality, every establishment whether producing under competitive or monopolistic conditions sells on the same principle. They all seek the largest net returns. But *it so happens* that in the case of an establishment producing under competitive conditions, the largest net returns are secured by selling at or near the cost of production. But in the case of a monopoly, it does not happen that the largest net returns are secured by selling at the cost of production, but usually at some point above. The essential principle is the same in both cases, and the fact that competition price roughly corresponds in some cases to the cost of production is incidental. Therefore we cannot fairly say that there is any one class of prices with which taxes are to be compared. If any comparison is to be made it must be with prices as a whole and not with monopoly prices alone.

It seems to me that the similarity between taxes and prices, monopoly prices if you choose, begins and ends right here. *There is a point above which taxes may not go without loss of revenue, just as there is a point above which prices may not go without loss of profits.* But beyond this the resemblance fails and we come im-

mediately to an important difference. It is this: private establishments always try to put prices high enough to secure the highest net returns, whereas the state does not seek, and seldom reaches that limit in the levying of taxes. It seeks rather to put the tax as low as is consistent with the fiscal needs which it is designed to supply.

Professor Hadley: I am not quite ready to leave the matter with Mr. Taussig. The question is not whether the resemblances or the differences are more important; but whether a line of division can be profitably drawn between payments made for things whose cost can be ascertained and things whose cost cannot be ascertained. You can find out the cost of a coat; but God Almighty does not know how much it costs to haul a car load of nails from Chicago to San Francisco. Hence we pay a price for our coats; while we pay something which is more like a tax for our railroad shipments.

DISCUSSION.—THE RELATION OF THE TEACHING OF
ECONOMIC HISTORY TO THE TEACHING OF POLITICAL
ECONOMY.

LED BY PROFESSORS HENRY B. GARDNER, BROWN UNIVERSITY, HENRY R. SEAGER, UNIVERSITY OF PENNSYLVANIA, AND GEORGE W. KNIGHT, OHIO STATE UNIVERSITY.

Professor Gardner: Recognizing fully the necessity of carrying the study of economic history into the most advanced stages of instruction in economics, the purpose

of this paper is to urge the importance of including systematic instruction in economic history in the general introductory course usually given in our colleges.

The purpose of such a course, at least for those students (usually in the majority) who do not take advanced work, and, I believe, for those who do as well, should be to develop the capacity, so far as possible, to form intelligent and broad-minded judgments on the economic questions which are constantly forcing themselves on the attention of the community. To accomplish this purpose it is necessary to give the student certain information, to point out the more available sources whence this stock of information may be increased, and to give him some training in methods of economic observation and analysis. The information given, it seems to me, should include 1, a description of the most essential features of the structure and working of the economic organism; 2, a statement of the main principles or laws revealed by an analysis of those forces which are fundamental under the existing system; 3, an outline of the principal elements of strength and weakness in this system and of the more important plans for modifying it. Instruction has generally been concentrated on economic analysis and its results, the structure of the economic organism and the elements of strength and weakness in the existing system being treated not systematically but incidentally, for the purpose of illustrating, or showing the limitations or bearing of, some piece of economic analysis.

The failure to describe systematically and compre-

hensively the foundations and structure of economic life has had an unfortunate effect on the attitude of students towards both economic theory and questions of economic policy. As regards economic theory the student is left without the knowledge necessary to estimate correctly its real scope and significance, to see clearly its relation to economic life as a whole, the field within which its conclusions hold true, the nature of the limitations to which they are subject, and to what extent they are valuable even when they fail to explain completely the actual phenomena of economic life. This lack in the student's equipment may lead, according to the character of his mind, to either of two opposite, but equally unfortunate, results: he may look upon economic theory as mere theory, having little bearing on questions of actual life, and hence discard it altogether, or he may treat the differences between the conclusions of economic theory and the facts of actual life as of minor importance and temporary in character; he may even regard the conditions under which the conclusions of economic theory hold true as ideal conditions to which the facts of economic life should be made, as nearly as possible, to conform.

As regards the student's attitude towards practical problems the same lack of knowledge of the structure of economic life leads to a failure to distinguish what is essential and rigid in the existing system from what is non-essential and flexible.

If the view here set forth is correct it follows: 1, that a description of the structure and working of the

economic organism is essential even in an introductory course in economics, and 2, since the purpose of such description is not merely to illustrate points of economic theory, or arguments on disputed questions of economic policy, but to develop the breadth of view essential to the right comprehension of both theory and policy, that it should deal with its subject not piecemeal and incidentally but systematically and comprehensively.

The importance of economic history in this connection is evident. The existing economic system is a comparatively recent historical development, it cannot be regarded as final but is at this moment undergoing important changes under the influence of forces some of which have been acting for generations while others have developed only within a very recent period. In order to understand what is characteristic in such a system, to estimate justly the relative importance and permanence of the various elements of which it is composed, and to distinguish its controlling tendencies, it is, if not absolutely necessary, at least extremely helpful to understand its historical origin and to compare it with earlier and simpler systems. This result can be best accomplished, I believe, by a comprehensive view of economic history. Disjointed historical references, however frequent, can never attain the same end, because they can never give a view of the movement of economic life as a whole. Another great advantage of the study of economic history is that it brings out, better than anything else can do, the interrelations of different phases of social activity and thus

impresses on the student's mind the essential unity of social life and of the sciences which treat of it.

As regards the point at which the teaching of economic history should be introduced there are both logical and pedagogical reasons for placing it at the opening of the course. It is logical that the description of the economic organism should precede the analysis of the forces at work in it; it is pedagogically helpful to familiarize the student with the more easily comprehensible descriptive matter as a preparation for the somewhat abstract conceptions of economic theory. The same reasons which lead us to place the descriptive matter as a whole before the analytical portion of the work will lead us to place the history of economic life before the description of the existing system; such a treatment not only enables the student to trace the actual course of development of economic organization, but by acquainting him first with the simpler forms of organization which have prevailed in earlier periods it minimizes the initial difficulties of the subject and prepares the way for a readier comprehension of the complex economic system of today.

Professor Henry R. Seager: The question under discussion is a pedagogical one, but of interest to students of political economy as well as to teachers of that subject. Rules laid down in regard to the best plan for supplementing economic instruction with instruction in economic history should serve as guides to private students as well as to college professors. Modern conditions make all thoughtful persons students of economic prob-

lems and thus give to our discussion a very wide significance.

Looking at the matter as a political economist my experience has led me to the following conclusions :

A. The outline course in economic history which has become prominent in college curricula during the last ten years is an indication of dissatisfaction with the methods of historical and economic instruction commonly practiced. Courses in general history must be recast so as to assign due importance to economic forces. When this is done the one-sided treatment of history which we have in these outline courses in economic history will no longer be needed.

B. The defects in current methods of teaching economics are two : (1) Instead of arriving at the premises to be employed in economic reasoning by the inductive study of the concrete facts of business life, these are presented to classes as dogmatic propositions, which seem to them hypotheses rather than abstractions. (2) Exclusive attention to economic theory results in the creation of half-baked dogmatists instead of scientifically trained students of social phenomena.

C. The remedies for these two defects are : (1) To preface the study of the principles of economics by a course in "descriptive economics." (2) To supplement the theoretical course with a course in economic history.

D. As an antidote against dogmatism, economic history should be studied according to the "period" and not the "outline" method.

E. Economic history should also be studied in con-

nection with courses on the history of economic theory and on practical economic problems, and these should come at the end of the entire course in economics.

The study of economic history is not a necessary or useful *introduction* to the study of economic theory. In fact economic history itself loses much of its force when studied in advance of economic theory. An adequate introduction to the latter study is found in a description of the concrete business phenomena and business institutions of the present.

Exclusive attention to the present, however, fails to develop the historical sense so essential to investigators of social phenomena. The student is too apt to conclude that the institutions of to-day always have been and always will be. To correct this impression economic history ought to be studied, not in outline, for this conveys the equally erroneous impression that the economic institutions of one epoch developed out of the economic institutions of the preceding epoch; but with reference to some well-defined period. Since the object is to emphasize the flexibility of economic institutions, that period should be chosen for study—of which we have adequate knowledge—which is in most striking contrast with the modern period. Such a period is that of the manorial system and guilds in England, or that of the Industrial Revolution in the same country. It is believed that the intensive study of either one or both of these periods, which shall emphasize the contrasts with modern conditions they present, will accomplish more

in the direction of developing an historical sense in the minds of students than the more exhaustive study of economic history according to the outline method. This, however, by no means exhausts the service which economic history may render students of economics.

The study of the history of economic theory loses much of its value unless accompanied by a study of the economic conditions to which each set of theories owed its origin. Ricardian economics cannot be adequately understood unless the business England in which Ricardo lived has been examined. The same is true of every other great system of economic thought.

On the other hand no practical economic problem can be solved by reference to modern conditions and to theory alone. In every case recourse must be made to the facts of economic history and only that solution which accords with the general trend of economic development can be satisfactory or lasting.

In conclusion, then, the arrangement of courses in economics which commends itself to the speaker's mind is as follows :

- (1) Descriptive Economics, which supplies students with the premises to be used in,
- (2) Theoretical Economics.
- (3) The Economic History of some distinct period presenting numerous contrasts with modern conditions.
- (4) The History of Economic Theory interpreted in the light of economic history.
- (5) Practical Economic Problems, to be studied by reference to theory and history alike.

Professor G. W. Knight : Political economy is a statement and discussion of the causes and forces underlying industrial action and phenomena, and of the laws to which individuals in society, consciously or unconsciously, subject themselves or are subjected in the attainment of industrial purposes and the fulfillment of industrial functions.

By economic history is meant the history of the facts and changes in the agricultural, industrial and commercial life of the world that have given the character and tone to different industrial epochs or eras, and which have produced the industrial institutions of the present time, in the same way that past political eras have resulted in present political institutions and theories. Present economic theory is the theory of an industrial society built upon and conditioned by past industrial and economic development. Hence it would seem essential to the correct estimate of the principles and maxims of present political economy that at least a cursory knowledge of the history of industrial and economic society be had in hand as a basis.

Confining the discussion to elementary or undergraduate work, I hold that a descriptive knowledge of economic history—the industrial past—and of the facts of the industrial present is important to a good understanding of the laws and theory upon which economic society is constructed and acts; therefore such study may best precede the study of political economy.

The teachers of history and of political science have already reached an analogous conclusion as to the study

of political science and theory. Modern instruction in civil government and civics in the secondary schools, and in political science and political theory in the colleges and universities, follows, not precedes, the more or less elaborate study of general and political history. The report of the Committee of Ten before the National Educational Association adopts this order absolutely. Yesterday the preliminary report to the American Historical Association of its Committee of Seven advocates the same idea. Everywhere the historical basis is insisted on in teaching political science. To-day one would stand condemned who offered a course in political institutions in general or of a particular state, or one in the theory of government, to students who had no prior knowledge of the political history of the world or of the particular state. What the political scientist has found profitable and best in his field the teacher of economics will find, is finding, expedient in the realm of political economy.

At the present time the teacher of history, through no direct fault of his own, is not covering this portion or phase of the historical field. His view is general, or, if specific, almost always purely political or religious or constitutional. Hence general courses in history, even though they may and usually do precede the first study of political economy, do not adequately deal with economic facts and changes. It is true that in the broad sense economic history is only a part of general history; still sufficient emphasis is not as yet laid on the economic forces and changes and facts; they are

often obscured, slurred over, or ignored by the teacher of history in his search for and exposition of the mass of political, religious and other facts and forces. Hence economic history must, as yet, be handled by itself, and probably for some time be taught by the instructor in political economy rather than the teacher of history as that term is usually understood.

Preferably the teaching of economic history should be done in a separate preliminary course covering at least a term or a semester. Where necessary, but with far less satisfactory results, it may form an introductory portion of the first course in political economy. Where four or five hours a week for a semester or longer are allowed for such an elementary course in economics, the first quarter of that time can be well used for a rapid descriptive survey of economic history, especially of England, and possibly for a brief description of present business organization. The use of economic history, I take it, for the student of political economy at this stage is not merely to illustrate principles. Such occasional excursions into economic history as were suggested by the last speaker leave no distinct impressions on the student regarding the meaning and course of that history, and further, such illustrations taken out of their proper setting are often both inexact and misleading.

The tendency toward priority of instruction in economic history, it seems to the present speaker, has become quite marked during the last eight or ten years, in both large and small institutions, and in both east and west. I believe it is a tendency in the right direction and one to be stimulated.

After the study of the principles of political economy, thus preceded by economic history, the student comes naturally to the contemplation of present economic problems and reforms, and later to the history of economic theory in connection with the intensive study of economic history. Here, and still more in graduate work, is the proper place for that exhaustive and intensive examination of economic periods advocated by the last speaker. Save in very rare instances such study of economic history as he has in mind does not seem fitted to, or to fit into, the early stages of the study of political economy.

Dr. James Schouler : As far as I have written history I have tried to bring out, suggestively at least, the economic life so far as it could properly be discovered. We must admit that the study of former ages in an economic light aids us immensely for the present. Consider, for instance, in the case of our own country, what new industrial conditions have developed from the invention of the cotton gin, the application of steam to locomotion, and the discovery of gold in California. The prophetic promise us at this very day a redistribution of our vast population as the result of our new practical appliance of electricity. The first aim of economic study should be, of course, a solution of the great problems of our present life ; yet we may derive much secondary help from a knowledge of our economic history and the facts of past experience.

Professor J. M. Vincent : I find myself incidentally defined in this discussion as an administrator of antidotes.

I accept the definition willingly because I find that students of economics often need an antidote of history. This fact comes out occasionally at a point so late in a man's career as his doctor's examination, when he fails to know the elementary history of factors in his own specialty. This is not the fault of his instructors in economics. The student has been so occupied with the present theory that he neglects the historical development. I do not teach economic theory, but I am obliged to observe its presence at all points in history, for nations and communities live and act according to some theory, whether they are conscious of it or not. I am greatly indebted to economists for instruction in method, for their rules for the observation of the present afford many hints for the study of the past. Yet I believe that history lies at the bottom of an intelligent understanding of existing institutions, whether political, social or economic.

As to the question immediately under discussion, I have little to offer, for the courses which I conduct in economic history are for graduate students. This work goes forward without regard to what is being done in the department of economics, except that I stop at what may be called the beginning of the present. I deliver the young men safely into the hands of Adam Smith. The teachers of the history of theory do the rest.

As to method, I am convinced that political history and economic history should be conducted on parallel lines. This expands the amount of matter to be treated in a given period and may render impossible in the time al-

lotted, the consideration of many things of interest but the main currents of progress can be traced. It would be impossible thus to follow the course of history in a solid mass from beginning to end, but cross sections may be made at suitable points. The conditions visible at these points should be attentively studied, looking backward to see what progress has been made, and forward to observe tendencies at work. A synoptical view of political, social and economic progress may thus be obtained, to the better understanding of each of these factors.

Professor W. A. Scott: I think Professor Gardner's view is the correct one. The objections to his plan which Professor Seager raises do not seem to me to be valid. A general course in economic history need not be any more misleading than an intensive course on some one period. Either may be misleading if it is improperly presented, but, properly presented, neither need be. Professor Seager also seems to overlook the fact that only a general course can furnish the student with the information needed for testing the validity and estimating the value and limitations of many of the theories with which he has to deal in the study of political economy. Theories, for example, like those of Henry George and the socialists, which attempt to explain the evolution of economic life, can be properly criticised and tested only by those who are familiar with the actual facts of the case.

SOME RESULTS OF AN INQUIRY ON TAXATION IN
MASSACHUSETTS.

ABSTRACT OF PAPER BY PROFESSOR F. W. TAUSSIG, HARVARD UNIVERSITY.

The object of this paper is not to discuss theories or remedies but to present some facts about the working of taxation in Massachusetts. In 1896 a commission was appointed of which I was a member, and charged with the duty of collecting facts and making recommendations. The facts which it was most difficult to ascertain were as to the nature of the personal property assessed for taxation, and more especially as to the amount of the taxed stocks, bonds, and other intangible personalty, as compared with the stock in trade, machinery, cattle, and other tangible personal property. On this subject the Commission was able to gather new and surprising information. In considering this information, however, it must be borne in mind that a considerable amount of intangible personal property (*i. e.*, securities and the like) is not taxable by local bodies in Massachusetts. All stocks in Massachusetts corporations are taxable to the corporation by the state, and the individual owners are not subject to local taxation at all. Mortgages on Massachusetts real estate are virtually exempt from taxation; and savings bank deposits are taxed by the state at a special moderate rate. But all shares in foreign corporations, all mortgages on foreign realty, all bonds of corporations, states and cities, all "monies at interest," are taxable to the owner by the town or city authorities; and the question was how much of each kind

of personal property was actually reached by local taxation. It was known that of the total property taxed, about three quarters was real estate, and one quarter was personal property, but it was not known how this one quarter of personal property was constituted.

The Commission secured information, first, as to the cities of the state, excepting Boston, and secondly, as to the towns. In the cities the tangible personalty (chiefly the stock in trade and machinery) was about \$130,000,000, and the intangible about \$65,000,000, a ratio of about two to one. As to Boston, where about \$200,000,000 of personal property is assessed, no precise information was obtainable, but it was estimated that the intangible and the tangible were each about one-half of the total. In the country towns the situation was apparently different. Here \$84,000,000 of stocks, bonds, and securities (intangible) were assessed against \$64,000,000 of tangible. But this excess of intangible personalty was found to be due to the peculiar situation of a few exceptional towns. In 18 selected towns there was found to be a great excess of intangible property; \$52,000,000 of stocks and securities were assessed in these, and only \$3,000,000 of tangible personal property. In the remaining 304 towns, however, it appeared that the ratio was about two to one, the same as in the cities,—\$61,000,000 of tangible against \$31,000,000 of intangible property. The few towns in which there was a large accumulation of intangible personal property were the so-called "tax-dodging" towns. In these a large number of persons of means had taken up their residence and, even

though they were not assessed stringently, added a large amount of intangible personalty to the tax valuation of the town. Hence in these towns the amount of personal property assessed was large, the assessments low and the tax-rate low ; whereas in strictly agricultural towns the amount assessed of personal property was low, the assessments stringent and the tax-rate high.

The Commission also made inquiries about the extent to which sworn returns were handed in by taxpayers. The laws require the handing in of sworn returns by each taxpayer, but with no stringent penalties for failure to hand in a return. In 32 cities it was ascertained that only 5,075 sworn statements were handed in, although in these cities there were no less than 221,000 taxpayers assessed for property, and 82,000 assessed for personal property. The great mass of the property and the great majority of the taxpayers were assessed, not by sworn returns, but by estimate of the assessors, or "doomage." The dooming process was satisfactory enough as to real estate and not unsatisfactory as to tangible personal property, such as machinery and stock in trade. But it was admittedly uncertain, unequal, and inefficient as to intangible personal property

The general results of the inquiries of the Commission were, first, that the amount of tangible personal property which was taxed exceeded the amount of the intangible ; secondly, that the existing system of taxation in Massachusetts led to a concentration of taxable securities in the "tax-dodging" towns ; and thirdly, that the taxation of securities was a failure,—unequal, hap-hazard in applica-

tion, unsound in principle and admittedly bad in its practical working. This unsatisfactory situation was not due mainly to inefficiency, still less to corruption on the part of the assessors, but to the inherent defect of the system itself. Consequently the Commission proposed a radical change of the system. They proposed the complete abolition of all taxes on intangible personalty, such as stocks, bonds and securities. In substitution for them they proposed, first, a general inheritance tax at the rate of 5 per cent. on estates exceeding \$10,000; second, a habitation tax on occupants of dwellings whose rental value was over \$400 per year, this tax being on presumed or estimated incomes as indicated by the character of the dwelling occupied by the taxpayer. The habitation tax was to be at the rate of ten per cent. on the excess of rental value over \$400.

DISCUSSION.—METHODS OF TEACHING ECONOMICS.

LED BY PROFESSORS ARTHUR T. HADLEY, YALE UNIVERSITY, AND RICHMOND MAYO-SMITH, COLUMBIA UNIVERSITY.

Professor Hadley: We must distinguish between two things: First, the substance, or *what* we are to teach; and second, the manner, or *how* we are to teach.

The substance has been sufficiently discussed under the topic "The Relation of the Teaching of Economic History to the Teaching of Political Economy." The manner divides itself into three heads, viz: the recitation, the lecture, and the exercise. For elementary classes the recitation and exercise should be given the

dominant place ; as students advance the importance of the lecture becomes more prominent ; when advanced teaching is reached the recitation may be practically discontinued ; the lecture takes the all important place, while the exercise becomes an occasional supplement.

In the beginning the student must tie himself to a text-book. But you will not know whether the student understands unless you ask him questions. Some can read a book and remember without a motive ; but such students are rare. An examination may serve as a motive, but this is generally too far off. The quiz or daily recitation seems to serve the purpose best. The questions should not be mechanical but life should be injected into them. Professor Sumner made great use of the written recitation for a part of the time. The objection is that it kills the instructor. It has all but killed Professor Sumner. In my own elementary classes, I give one lecture a week, then use the other two hours for divided sections with old fashioned recitations conducted by younger instructors.

The enforcement of regularity is very helpful. The mere attendance is a great safeguard ; for a man must absorb to some extent. In conclusion I would say, insist on regularity of attendance clear through. First emphasize the recitation, then the lectures, and lastly, written papers or exercises.

Professor Mayo-Smith : I interpreted the question more broadly than Professor Hadley. I agree with him for the most part ; but the sooner you can get the stu-

dent out of the book the better. The living voice is most effective. Compulsory attendance is apt to make the instructor lazy. It takes away his responsibility.

I believe that method of teaching is best that accomplishes what we want. We want to increase the student's knowledge and leave him at the end a better man. I ask myself two questions: First, what are these men here for? Second, what am I here for? What is my object in teaching? I must comprehend what they want or I miss connection. On the other hand unless I know what I want there will be no system. Unless we have these two things in hand no method is worth anything.

We know in general what the student wants. Most of them come into the class expecting to have difficult questions solved. We should grasp hold here and take advantage of this desire; but we want to give them fundamental principles too in order that they may be able to grapple with the problems of the day.

Two things are very useful to me. One is an introduction in which the gradual evolution of economic principles is worked out. This is the first important thing to get in a study of economic institutions. I emphasize the development of economic freedom and the institution of private property, but I do not lay stress on economic history. So I satisfy the student's desire for accurate knowledge. Then I make him see that this is not all accident, and as a result he views it from a higher standpoint. The second ground is ethical. Ethics must be considered. Young men and ladies may

be too idealistic but we are apt to be too cold. We must ask are these things right. We may reach the conclusion that what is, is right. What is would not be if it were not right. But we may also reach the conclusion that what is, is unjust. Injustice and hardship will come to some. Conditions change faster than we can adapt ourselves to them. This is what I teach. But what are you going to do under these circumstances, they ask. It is here that the questions of socialism and the like come in. Economic institutions have been developed for the good of the community and the individual has to undergo hardship in certain cases; but insurance and like schemes must take care of them.

In conclusion I would emphasize that our teaching should satisfy the student's desire for knowledge and should give him a basis on which to do further work.

Professor Taussig: The problem of dealing with large numbers of elementary students is an exceedingly difficult one, and in Harvard College we have tried various ways of solving it. The ideal method would be that of close discussion by competent teachers with classes or sections of moderate size. But where you have the most competent teachers you commonly have large numbers. Our present plan, which seems to work well, is to lecture to all the students (some 450) twice a week, the lectures being chiefly comment on a stated course of reading. For the third exercise in the week, they are divided into sections, twenty or so in a section, under the charge of several assistant instructors. At this third hour, twenty

minutes of time are given to answering a question in writing; the rest of the hour is given to discussion.

It is of educational advantage to put into the hands of students a solid book, which in our subject must be a hard book. It is because of its educational value, and because it prevents any delusions as to economic questions being easy of solution that we still begin our instruction by using Mill.

Professor F. C. Clark : The first thing necessary in a discussion of this kind is to describe the class of students to whom the methods are applied. This has not been done to-day, either in the discussion on economic history this morning or in the present discussion. We cannot come together and compare methods accurately unless we at least define the grade and preparatory equipment of the students taking the work.

At the Ohio State University the majority of the students that take elementary economics as a required study take it in their sophomore year, having had little previous training in history and no previous training in economics. These students are first treated to a few introductory lectures on the growth and development of the science, and are made acquainted with the lives and writings of the more prominent economists, past and present. Then the text-book (Walker's Advanced Course) is taken as a guide, and reliance is placed on the following expedients as supplementary work to give breadth of view and laboratory practice :

(a) Parallel readings in other authors to acquire

familiarity with "the sources" as the historians near by would say;

(b) Economic problems to be solved in connection with text-lesson, and the answers to be incorporated in a well kept note-book;

(c) Easy investigation into business life, labor, etc., involving a search for practical illustrations of principles; (students are especially fortunate in Columbus in having an agricultural and an engineering department attached to the University and a large city as a laboratory besides.)

(d) A daily black-board bulletin furnished by each student in turn and read at the opening of the session. The purpose of this is to stimulate the reading of business (trade and financial) literature and to keep the student in touch with the real world every day.

(e) A question box wherein are placed all questions on any subject gone over. It is impossible with a large class to make all points clear to all. By the question-box method the teacher learns what points are not understood and can either explain the subject over again to the class or appoint a meeting with the inquiring student. In this way all the points and all the students are kept "rounded up." The conditioning of students is thus minimized.

The text-lesson is usually accompanied by brief, critical lectures on the subject in hand; sometimes anticipating the succeeding lesson. These and other features are adopted in the work which continues for twelve weeks.

The remaining six weeks of the semester are devoted to practical applications of economic principles. The method pursued here is wholly different. Walker is abandoned. We construct our own set of topics and assign one to each student in advance. Research is made in the library, and a fifteen minute paper accompanied by a complete bibliography is presented by the student and read by him before the class. Each member is required to prepare and deliver—when called upon—a three minute speech on the topics of the day, or he may criticize extempore the paper read. The “wind” is kept out of such speeches by requiring a citation of authorities for opinions expressed.

It is remarkable how much original material can be mined among sixty students by this method. They come from all parts of the state and bring together a great many valuable observations. The results have been eminently satisfactory from all points of view.

Such in brief constitutes the method of teaching elementary economics at the State University. There are unique methodological features in the advanced courses but time will not permit mention of them here.

DISCUSSION.—THE PROBLEM OF THE REFORM OF THE CURRENCY.

LED BY PROFESSOR F. W. TAUSSIG AND MR. HORACE WHITE.

Professor Taussig: I shall endeavor to do no more than to make a statement of the proposals made by Secretary Gage in his annual report, and to consider

how far the changes there suggested would lead to important modifications in the currency situation. In doing so, I shall confine myself to the proposed changes in the paper money issues, and shall say nothing about the basis upon which those issues shall rest. For the purposes of the present discussion, we may assume that the currency is to rest on a gold basis, and need not enter on the controversy as to bimetallism.

Three important proposals are made in the report. First, for an issue of new $2\frac{1}{2}\%$ bonds in exchange for the present 4% and 5% bonds; second, new terms for the issue of national bank notes; third, an important reorganization of the Treasury Department. I shall consider these in their order.

(1). New $2\frac{1}{2}\%$ bonds are to be issued in exchange for the outstanding 4% and 5% bonds, with an equitable allowance for the difference in interest. The new bonds are to be payable after ten years, at the pleasure of the government; that is, are to be insured against redemption for a decade, and thereafter to be payable at the pleasure of the government. They are to be payable, principal and interest, in gold coin. The exchange for the 4% and 5% bonds is expected to cause neither loss nor gain to the government nor to the present holders. Secretary Gage also contemplates the possibility of an issue of additional $2\frac{1}{2}\%$ bonds over and above those to be exchanged for other bonds now outstanding and bearing a higher rate of interest; but, as will presently appear, the issue of such additional securities is no necessary part of the changes contemplated by him.

(2). The proposed changes affecting the national banks are three in number. First, in places having a population of 2,000 or less banks with a capital of not less than \$25,000 may be organized. Second, the rate of taxation on national bank notes is to be reduced to one-half of per cent. per annum. Third, certain important conditions of new issue are proposed.

The banks are expected to make issues against the security of the new $2\frac{1}{2}\%$ bonds. These bonds, however, are not to be purchased directly by the banks, but are to be obtained through the intervention of the Secretary of the Treasury. The banks are expected simply to deposit in the hands of the Secretary of the Treasury currency—greenbacks, treasury notes, or silver certificates—up to a total of \$200,000,000. The Secretary is then at his convenience to substitute $2\frac{1}{2}\%$ bonds for this amount of currency. Apparently it will be left to his discretion to procure these $2\frac{1}{2}\%$ bonds, either by exchange for outstanding bonds, or by fresh issues. When he has substituted the bonds, *i. e.*, virtually purchased them, with the currency deposited by the banks, that currency is to remain in the possession of the Treasury, as will presently be described. During the time intervening between the deposit of currency and the procurement of bonds, the circulating notes of the banks are to be exempt from taxation. By this somewhat circuitous process a large, fresh deposit of United States bonds by national banks as security for circulation is to be brought about.

This initial step of the deposit of bonds having been

accomplished, the issue of notes is to take place under conditions similar in the main to those now provided, but with some important modifications. Notes may be issued up to the par value of the new bonds instead of up to ninety per cent. as the law now provides. Further, if the bank has deposited bonds up to fifty per cent. of its capital, then it may issue additional notes up to twenty-five per cent. of such deposit, (*i. e.*, up to a minimum of twelve and one-half per cent. and a maximum of twenty-five per cent. on its capital). These additional notes are not to be secured by any pledge of bonds, but issued against assets of the bank. The government is nevertheless to guarantee the payment of these additional notes, as well as of the notes secured by bonds; but, to protect itself against any loss possible on this guarantee, a tax of two per cent. per annum is to be levied against the unsecured circulation, the proceeds constituting a safety fund for the payment of the notes of failed banks. In addition, the government in case of failure is to have a first lien upon all assets. So far, the terms of issue are made somewhat more liberal. On the other hand the banks are to be required to keep a redemption fund of ten per cent. of the amount of their notes, instead of the present five per cent.; and further, no notes of a denomination less than ten dollars are to be permitted.

(3.) For the reorganization of the Treasury, Secretary Gage proposes the establishment of a separate department to be known as the "Issue and Redemption Division." This Division is to receive \$125,000,000 in gold from the general funds of the Treasury. It is to

receive also silver dollars and silver bullion held against the certificates and treasury notes issued under the acts of 1878 and 1890. So far as the gold is concerned, the new Division is henceforth to pay legal tender notes in gold on demand, and thereafter to impound and hold the redeemed notes, paying them out only on a re-deposit of gold. In other words, it is automatically to exchange notes for gold and gold for notes, as the Issue Department of the Bank of England does. Furthermore the Division is to hold not only such notes as have been redeemed in gold, but also an additional sum of \$200,000,000 in legal tender notes. This huge sum of legal tender notes is to be obtained from the currency deposits expected from the national banks, as described under the second head. The banks, it is true, are to be allowed to deposit any and every form of currency,—legal tenders or silver,—as a means of securing their bonds from the Secretary; but the Secretary is expected to exchange whatever form of currency thus comes into his hands for legal tender notes, and then transfer these legal tender notes to the new Issue and Redemption Division. Elsewhere Secretary Gage describes this as the “conditional retirement” of the sum of \$200,000,000 of legal tender paper.

So much in explanation of the plan: a few words now in comment upon it.

The establishment of the Issue and Redemption Division is unquestionably imperative so long as the government continues to issue legal tender paper. The present situation, in which there is no separate fund of

specie for the redemption of the paper, is untenable. The so-called "gold reserve" has now no legal existence, and the stability of the circulating medium is dependent upon the accidents of a fluctuating revenue and on the unhampered discretion of the Secretary. On the other hand, the question at once presents itself, whether notes which have been paid in gold, and which under this plan are to be "conditionally retired," should not be destroyed and put an end to once for all. It is obvious that if these proposed changes are carried out, the new Issue and Redemption Division will hold, locked up in its coffers, at least \$200,000,000 of notes and probably more, which will be counted upon the Treasury accounts as cash and which will present to Congress and to the public the spectacle of a huge accumulation of money, available for any desired expenditure and presenting a constant temptation both to extravagance and to inflation of the currency. The political dangers of such a situation, and the difficulty of preventing legislation which will destroy the beneficial effects of the proposed plan, suggest themselves at once.

It is obvious, however, that the practical working of the plan, so far as the conditional retirement of the \$200,000,000 of legal tender notes is concerned, depends upon the extent to which the national banks will avail themselves of the new opportunities offered them. If the banks find the new arrangement tempting, the operation may take place on a considerable scale; if not, the only important change for the Treasury,—this to be sure is one of great importance,—will be the trans-

fer of \$125,000,000 of gold from the general funds to the Issue Division. Now it seems to me questionable whether the new terms of issue offered to the banks will tempt them to any great extent. It is true that a bank will be able to buy $2\frac{1}{2}\%$ bonds at par, or very nearly at par, will be able to issue notes up to the par value of the bond, and will be subject to a tax of only one-half of 1% . But it will still have to lock up in a $2\frac{1}{2}\%$ security whatever part of its capital it uses for the purposes of issuing notes. Further, it will have to keep a redemption fund of ten per cent. instead of five per cent. The privilege of issuing notes against assets without bond security is so limited that it must seem doubtful whether anything will come of it. Before availing itself of this new privilege a bank must invest half of its capital in $2\frac{1}{2}\%$ bonds, and the maximum of its unsecured issue is only one fourth of its capital. Further, the unsecured issue is subject to the very heavy tax of two per cent. a year. Apparently the provisions about the issue of notes against assets are designed to enable a new supply of currency to appear in times of panic and crises, rather than to promote the extension of the national banking system into outlying agricultural districts. This greater permeation of the national bank system is provided for only by the permission to establish banks with a capital of \$25,000 in places of small population. It is to be noted that Secretary Gage does not propose to authorize the establishment of branch banks in small places. On the whole, while it is possible that some banks of large capital will avail themselves

of the new opportunities for note issue, it is doubtful whether this will be done to any great extent and still more doubtful whether it will promote greatly a spread of the national banking system in those parts of the country which most urgently need additional banking facilities.

In judging of these recommendations, however, it must be borne in mind that the Secretary himself presents them not as a final measure but in his own language, "as tentative steps in the direction which, consistently pursued, will lead to conditions ultimately desirable." The tone and temper of the report, its measured statement of the difficulties of the situation, its well guarded and carefully considered proposals for important changes, deserve the highest commendation.

Mr. Horace White: Five years ago I was honored with an invitation to address the Academy of Political and Social Science, at Philadelphia, on some branch of the money question. I took for my text the subject of national and state banks, and endeavored to show that it was possible to have a currency more flexible, more easily available, far less costly, and much less dangerous than silver, by amending the national banking law in a few particulars. These amendments would look to the issue of bank notes under federal supervision, based on the assets of the banks instead of government bonds, and to a tax on all bank notes outstanding for the accumulation of a common fund to redeem the notes of any failed bank.

The proposed system already existed on our northern border, but the Canadians did not exactly invent it. They merely took a leaf here and there, from time to time, out of the great book of banking that the world has been compiling for centuries. The safety fund part of it was devised in 1829, by Josiah Forman, of Syracuse, N. Y., who said that he imported it from China. The practice of giving note holders a first lien on the assets of failed banks was an American conception. It originated in Connecticut in 1830. The double liability of stockholders, which is also an important part of the Canadian system, originated in England, and was adopted in Canada in 1835, and afterwards by several American states. The plan of making the notes of a failed bank draw interest in order to prevent depreciation, (now in force in Canada with beneficial results), originated in Massachusetts as far back as 1811. Where and when the regular examination of banks by public officers began, I do not know. It was an essential part of the Louisiana system of 1842. The right to inspect the affairs of banks was reserved by the Massachusetts legislature as early as 1784, but whether it was exercised then, I do not know.

When the panic of 1893 came on, and the struggle over the repeal of the Sherman Act became bitter, presaging the division of parties on the silver issue which took place last year, the need of some decisive action for currency reform became manifest. It was perceived that if the money standard were to be the chief political issue for an indefinite period, not only would business be

forever cringing under an expected blow, but a time must come when the chapter of accidents would give victory to the supporters of a depreciated currency. Whether they would be satisfied with the measure of depreciation implied by the silver standard, or would aim at something lower, nobody, not even their own leaders, could foretell. These considerations led to the action taken by the American Bankers' Association at its annual meeting at Baltimore, in October 1894, and to the recommendations made by Secretary Carlisle in his annual report of that year, which are known to all of you. The plan of note issues without bond security, was embraced in both. Secretary Carlisle proposed however, to require a deposit of thirty per cent. of United States legal tender notes, instead of one hundred and ten or one hundred and twenty per cent. of U. S. bonds as now, and to rely upon the assets of the banks for the remainder. This was followed by a rather hurried investigation of the Carlisle Plan by the House Committee on Banking and Currency in December, 1894. The plan was approved and a bill in conformity with it was reported to the House. The majority against it was not large, but it failed to pass.

Since that time, the subject has attracted an increasing amount of attention among economists and has received the approval of the greater number who have given public expression to their views.

When I began to consider this subject, I looked first to see what consequences would have followed it under

our national bank system if there had been no bond security pledged for the redemption of the notes of failed banks. I examined all the bank failures from 1865 to 1891, and followed the distribution of their assets as far as the liquidation had then proceeded. I found that out of a total number of 3677 banks, there had been 164 failures, and that the circulating notes of these banks at the time of their failure was \$16,209,160. The assets of the same banks realized \$44,606,561, or nearly three times the amount of the notes. A tax of one-fourth of one per cent. per annum on all notes outstanding for the purposes of a safety-fund would have yielded more than the entire amount of failed bank notes.

That, however, is not the end of the argument. We cannot judge of the future by the past, if we vary the conditions. Under present and past conditions, banks are required to lodge ample security with the government for their circulating notes. The door to fraud is closed in that quarter. Swindling bankers may defraud their depositors, but they cannot cheat their note holders. What will happen if the door to that kind of fraud is left open? Will not a new kind of bankers rush in expressly to take advantage of this open door? These are pertinent questions. If they cannot be answered, the advocates of that system of bank note issues had best hold their peace. The object of this paper is to make some answer to them. Bear in mind that we are not now dealing with occasional and ordinary bank failures like the one which took place in Philadelphia the other day. The experience of the past has shown that all

such failures can be taken care of, so far as note holders are concerned, by means of a very small annual tax on note issues, a tax much smaller than the present one, so that as regards this kind of failures, all the assets might have been left for the reimbursement of depositors.

As regards the establishment of banks, with the intent to swindle the public by means of fraudulent notes, it may be said that under the Baltimore plan, note issues are restricted to fifty per cent. of the bank's capital, except in certain emergencies, of which emergencies the Comptroller of the Currency is to be the judge. The *bona fide* character of a bank's capital and the means of ascertaining it have been reduced to a science during the past thirty years.

It is impossible to start a bank now, without actually paying in the money which purports to be there. It may be spirited away afterwards, but it must be there in the beginning. Moreover it must have been contributed by five persons and not by any less number, and these five persons must be of a character and standing satisfactory to the Comptroller of the Currency, because he is not obliged to issue a certificate for a new bank in any case whatsoever. The discretion has been wisely left to him to grant the certificate or not. If he does not like the looks of the new candidate, he simply withholds the certificate and he is not obliged to give any reasons for doing so. Evidently this provision of law was adopted for the purpose of preventing shady characters from starting banks under the national system. That certificates have been refused for this reason is a

fact within my knowledge. Granted that the Comptroller cannot personally know all the applicants for bank charters, he has means for finding out whether they are men of repute in their respective communities and he does find out.

It is just as easy to start banks in order to swindle depositors as to swindle note holders, yet we know as a fact, that this is not done. Depositors are sometimes swindled, no doubt, but I do not believe that the annals of the Comptroller's office will show one instance where it is fair to suppose that a bank was founded and its capital paid in, with the intent to fail and cheat the depositors. How is this cheating to be done? Evidently by making loans which the bank officers know to be bad. To do this is to put the bank's capital at risk. All the losses fall first on the capital, next on the stockholders' liability. Only after these are exhausted, does any loss fall on depositors and general creditors. So we are asked to assume that people of sufficient repute to pass muster at the Comptroller's office, are going to put up their own money and their personal liability for an equal sum on the chance of being able to swindle the community out of enough to compensate them for their loss, and something more. But that is not the greatest risk they incur. The state prison stares every one in the face who sets out on such a career, and Judge Lynch not seldom takes a hand in the proceedings.

I have the very greatest respect for the spirit that prompts opposition to any change in the present system of securing bank notes. I insist however, that the op-

position shall formulate its plan for the currency of the future. I affirm that the present system is inadequate, that it is doomed by natural causes; that is, by the eventual extinction of the national debt. Circumstances have occurred during the past five or six years to check the payment of the debt, but they are only temporary. The persistent forces are working the other way. If it be said that sufficient unto the day is the evil thereof, I reply that the evils resulting from a disordered currency are already upon us, that they threaten to be greater rather than less, and that nothing stands between us and financial chaos except the uncertain results of a popular election.

It is a question whether, under the proposed plan, the government ought to continue to guarantee the notes. Its present guarantee involves no risk because the banks first deliver to the government more than the value of all the notes guaranteed. I am of the opinion that the present guarantee should be continued, but I appreciate the objections to it. What is to be said in favor of it is, that it leaves no uneasiness in the mind of any person touching the goodness of any note that comes into his hands. I would not guarantee the long continuance of any system which should leave doubts in the public mind as to the solvency of bank note issues. I should apprehend that the first case of loss arising from a failed bank would be followed by the upheaval of the system. "But," you say, "there would be no loss." Yes, we say there would be none in the long run, because if the assets of the banks of the United States are not

generally good, nothing is good, our business is a sham and the government itself will fail financially, and nothing can prevent it. There would be no loss in the long run, but there might be some loss unless there were a larger fund to draw upon than the amount in the proposed safety fund at some particular moment; that is, until it were replenished in regular course. Such loss is most unlikely. I believe that it has never happened in Canada. Although they have had bank failures, there has never been a case since the present system was adopted, where a note-holder met with even temporary loss. In fact the notes of failed banks have generally commanded a slight premium by reason of the interest which they draw. The solvent banks hoard them as a means of investing their surplus funds.

On the other hand the argument against making the government responsible for bank liabilities is very strong. It rests upon the same basis as the argument against the government's liability for other private undertakings. It can be justified, if at all, only on the ground that the public are now so accustomed to it that more harm than good will result from abandoning it. It may be said that since national bank notes are not legal tender, nobody need take them—hence, that the government's guarantee will be unnecessary. But we all know that people will take what is current at a particular time and place and that wage workers are often so circumstanced that they could not refuse the kind of money tendered to them, even if they had sufficient intelligence to discriminate.

An essential part of the plan under consideration is that note holders should have the first lien on the assets of failed banks. This is now a settled principle in banking science. It results logically from governmental control over banking. When the government intervenes between the bank and its customers, (as it does more or less in all civilized countries), it does so in order to protect the latter. It may therefore, extend more or less protection to different classes of customers. It ought to extend most to those least able to protect themselves. These are the note-holders who are the more helpless and less informed portion of the community. The propriety of giving them a prior lien on the assets was first recognized in Connecticut in 1830, but it was first limited to the holders of notes of less denomination than one hundred (\$100) dollars. In other words, the design was to protect the poor—and that was manifestly right.

We may assume that this principle is too firmly rooted in the United States to be disturbed. Yet we hear protests now and then from the depositors against this discrimination in the proposed plan. They do not perceive that the same discrimination exists now, that the deposited bonds are a part of the bank's capital and that these are set aside for the note holders first, only the overplus going to the other creditors. If the bond security did not exist, the bank would have just so much more capital in its own vaults, provided it were not lost in the meantime by bad banking. Five per cent. of the banking done under the national system is bad

banking, or sufficiently bad to result in failure. This is shown by the experience of thirty-two years. As to ninety-five per cent. therefore, it can be proved that if the portion of capital represented by government bonds had been in their own vaults all the time, it would have remained intact and available for all purposes. So it appears that the complaint of the depositor class against unjust discrimination in favor of note holders has very little ground to rest upon. Yet it is said that there are other banks not under the national system as well as trust companies, which receive deposits, and since these have no note liabilities and hence no prior liens on assets, they may draw depositors from the national banks. I cannot think that this is a serious danger. In the first place the large banks in cities where deposits do most abound, are not generally note issuing institutions. They do not find any profit in note issues at present. Their note issues take the form of discounts; that is, of entries in the pass books of their customers authorizing them to draw checks on the bank for certain amounts. These liabilities and also the cashier's checks, take the place which bank notes occupy in the smaller towns and rural districts. Although different in form and size their nature is the same.

It is my opinion that the safety-fund plan will eventually be adopted, at first perhaps in modified form. This belief is much strengthened by the fact that Secretary Gage's plan embraces it in part. The amount of notes which the Secretary would allow to be issued against general assets is only twenty-five per cent. in addition to the

secured circulation. The principle, however, is the same, and he says in his interview with the House Committee on Banking and Currency that a change from the present method of note issuing must be made gradually. The experiment must be tried. If found to work well it may be broadened.

Hon. A. J. Warner : While I hold that the money question must be considered as a whole and not by parts, I shall not discuss here the silver question. Secretary Gage's plan virtually proposes to transfer to the banks the issue and control of all our paper currency.

First, what is the public to gain by taking up our present legal tender currency and substituting therefor the non-legal tender promises of banks to pay ? Or will that make the currency better ?

But more important, by what principle are the banks to be governed in the supply of this currency ? None but their own interest.

As to an elastic currency, there never was such a currency and never can be. There is no such relation between the demand and supply of a currency that is limitless and practically costless, as admits of automatic regulation. An elastic currency is a delusion, and I challenge anybody to point out any law by which such a currency automatically expands and contracts.

There is no difference in principle between basing currency on debt and on land except, perhaps, that land is more limited. The principle of basing notes on either debts or land is vicious. It is Lawism !

The value of a paper currency can be made secure only by due limitation of quantity. The important thing is, due regulation of quantity rather than security of final payment of notes.

The only way to maintain the gold standard in the United States is to restrict all other forms of currency, and keep prices so low that gold will come here of itself and stay.

Will banks govern their issue of paper by any such principle? No. They will be governed by no principle but their own interest—there is no other principle by which, as a whole, they can be governed.

As to repudiation, let me say, there are two kinds of repudiators; those who want to put less on the platform of the scales and those who tamper with the weights on the scale beams. The latter are the greater thieves, and by this easy method of changing the weights money has been doubled in value and property generally cut down one-half in twenty-five years.

But the vital question here is: How is stability of money and prices to be secured under a system of regulation such as is proposed in this scheme? I should like to have some one point it out. If it has a scientific basis, it ought to be shown. I say it rests on no scientific principle. I am sure no economist who has written since the days of Ricardo, McCullough, Torrens and Overstone, can be pointed to as endorsing such a scheme, and I do not believe there is an economist of distinction living on either side of the ocean who would claim that such a mode of regulating money supply was scientific or sound, and no enlightened nation will adopt it.

Mr. White: Mr. Warner asked the question whether there would be sufficient gold for the purposes of business, but he did not give us any standard of sufficiency. Such a question is not intelligible. I might think that a certain amount was sufficient and he might not.

Mr. Warner: I meant enough to maintain prices at their former level.

Mr. White: Then it is a matter of opinion whether they are maintained at such level or not, and whether the cause of price-changes is the supply of gold or something else. Here again we have no standard of sufficiency. Mr. Warner says also that there can be no such thing as an elastic currency. I will tell what I understand by that term. We know that at harvest time in the grain growing states there is a greater demand for currency than there is at other times. My idea of an elastic currency is a currency that the banks can issue when it is demanded, in any amount that may be demanded without waiting to import it from other states or countries and without waiting to buy it from the government at the rate of \$1.10 or \$1.20 per dollar. This is one illustration among many that might be given.

Dr. R. M. Breckenridge: In connection with his scheme for currency reform, Secretary Gage proposes certain amendments to the National Bank Act. The second of these is the suggestion to permit national banks to be organized with a minimum capital of

\$25,000 in any place having a population of 2,000 inhabitants or less, Mr. Gage's purpose being thus to provide many communities, now deprived thereof, with the aid of banks of issue, and to relieve them from onerous rates of exchange and discount charges.

Under the national banking system, however, the burden of onerous discount charges is a grievance to which not only numerous villages, but also many cities, with considerable populations and extensive banking facilities, may justly pretend. Quotations in *Bradstreet's* for forty-three cities, not one of which had less than 25,000 inhabitants in 1890, show, for example, that while the average lowest rate of discount quoted weekly for first class double-named commercial paper has been 4.04% in Boston, and 4.6% in New York, it has averaged 5.9% in Chicago, 6% in Richmond and Buffalo, 7% in Charleston and Minneapolis, 8% in Omaha and Houston, and in Denver and Seattle 10%, during the last four years, 1893-1896.

So great a diversity of discount rates in the centers for large sections of the country manifestly points to organic defects in the present mechanism for distribution of the capital available for short-term loans. Yet rates in the small communities for which Mr. Gage plans relief, are usually higher than in the centers to which they are tributary, and will probably remain higher, though likely enough in less degree, under any system that may be introduced.

The devices such as re-discounting, borrowing in the principal money markets, or sale of capital stock to in-

vestors resident in wealthier sections, to which banks, where the capital dearth exists, resort for relief, have proved incapable of overcoming the faults of the present mechanism. The extent to which such devices have been used, permits no sanguine forecast of their efficiency in the future. Adequate relief, either for large centers or small towns and villages, may be obtained only from some more radical measure of reform than the one proposed, and this, it is submitted, must be the establishment of some form of branch banking. From one point of view the incentive for arranging a better distribution of loanable capital, for effecting more nearly an equalization of rates, has hitherto been absent; from another, the opportunity is withheld. Few banks are willing to delegate the management of even a part of their discount business, whatever the promised returns; and no bank may open branches, for such action is forbidden it by law.

Mr. Allen R. Foote: About the first of August, 1893, I had a conversation with Senator Jones of Nevada, upon the subject of the repeal of the silver purchase law, for the consideration of which an extra session of Congress was about to convene. In effect Mr. Jones made to me the following statement:

The silver men did not like the Sherman purchase act because it made silver a commodity. We want silver made a standard primary money for final redemption. We accepted the silver purchase bill in the hope that the course of events would so equalize the commercial value

of gold and silver as to bring them on a parity at the ratio of 16 to 1. As the matter now stands we shall oppose the repeal of the silver purchase bill until the agitation of the subject has prepared the minds of the people to make a demand for the free coinage of silver at the ratio of 16 to 1. We will then permit the silver purchase bill to be repealed. After that bill has been repealed we will not permit any further currency legislation that does not provide for the free coinage of silver at the ratio named.

The course of events since the repeal of the silver purchase bill proves Senator Jones to have been correct in his judgment of the power of the silver Senators to control legislation.

Mr. Horace White has said that the largest financial institutions do not issue all of the national bank currency that the present law will permit, because they do not find it profitable to do so. I hold in my hand a copy of the "Official Ballot" issued by the "Patriots of America" to be voted in all lodges throughout the United States, (it is said this order has lodges in some forty states,) on the second Tuesday in January, 1898. On the back of this ballot with other matter, the following is printed :

"When class interests are permitted to do the thinking of the people it results in such class interests utilizing legislation to enrich themselves, ending in impoverishing the people, creating a restless and distressed citizenship, and finally despotism to hold the people in subjection; and that the only escape from such a drift of

affairs is by such method as will secure a majority expression of opinion from all the people, in which expression the unselfish and disinterested people will outnumber those selfishly interested in a proposed measure. This is illustrated in a proposition now before the the American people :

“ The national bankers are now asking the government to retire the greenbacks ; permit them to deposit government bonds with the U. S. Treasurer ; continue to draw down their interest on the bonds ; on the security bonds to draw from the government national bank notes to the full face value of the bonds, at a cost to the bankers of one-half of one per cent. interest per annum ; and in the meantime to be exempt from taxation. Under present law they are borrowing money from the government at the rate of one per cent. per annum, are exempt from taxation, and propose, now, to draw to the full value of their security, and, to reduce the rate of interest to one-half of one per cent. per annum, for money which they loan to you and I at from six to ten per cent. per annum. It is only a question of a few decades, when, under such a law the property of a nation will be transferred to the class thus benefited.”

Here are two statements directly opposed to each other. One, that the largest financial institutions do not issue the full amount of national bank currency to which they are entitled under the ^{*}present law and the presumption is that they do not do so, because they do not find it profitable. The other statement is, that under the existing law national banks are

permitted to borrow money at one per cent. and loan out at from six to ten per cent. It would appear from this statement that the issuing of national bank notes is a very profitable venture, and the presumption is that since it is profitable the opportunity should be taken advantage of to the full extent of the limit allowed. If the people can be properly educated as to the truth of one or the other of these statements, or to know how to find the truth in the golden mean between the two extremes, such education will go far towards settling the currency question.

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GOVERNMENT BY INJUNCTION

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NOTE.

THIS paper, originally published in the *Law Quarterly Review*, (London), for October, 1897, is here republished, by permission, with some slight changes designed to make its reasoning clear to laymen as well as to members of the legal profession.

GOVERNMENT BY INJUNCTION.

The power to issue writs of injunction is one of the chief characteristics of courts exercising chancery powers. An injunction perpetually restraining a defendant from doing specified acts may be granted after full hearing as the final relief sought in the suit ; but a preliminary injunction temporarily restraining the commission of certain acts, until the case can be finally decided, may also be issued immediately upon the filing of the bill of complaint, or at any subsequent time, and either with or without notice to the defendant. An injunction of either class is in substance an order of the court to the person named in it directing him to refrain from doing certain things. The penalty for any violation of this prohibition is a summary proceeding by attachment to punish the offender for a contempt of the court in disobeying its order. Upon the granting of such an attachment, the person named is arrested and brought before the court to answer for his contempt. Such a proceeding is invariably, in the absence of statutory provision to the contrary, heard by the court without the intervention of a jury, and with no right of appeal for error of law or fact. If the contempt is established, punishment may be inflicted by fine or imprisonment or both, without any limit as to the amount of either, although in practice the term of imprisonment rarely, if ever, exceeds six months.

The vigorous and summary nature of this remedy

renders it exceptionally effective in affording relief, and also, it must be conceded, exceptionally capable of abuse. The intensity characteristic of all the relations of life at the present time, makes the demand for such a remedy urgent, and has made the increasing use of injunctions one of the marked features of the modern development of equity jurisprudence. The power which Chancellor Kent described as the strong right arm of the court, has come to be exercised with a frequency hardly compatible with that caution which he declared should always mark its use, and to be applied to purposes certainly not originally contemplated as within its scope. The abatement of public nuisances, of which Lord Eldon at the beginning of the century hesitated to take jurisdiction, has long been a well established ground for relief in equity both in England and America. Mandatory injunctions are granted preserving only the semblance of restraining instead of compelling action. Contracts like those of singers and actors for their exclusive services, specific performance of which cannot be decreed, are yet substantially enforced by enjoining rendering such services to anyone else, at least where there are negative covenants to which such an injunction can be made applicable. In America by statutes in several states the remedy by injunction has been called in to secure the enforcement of criminal laws which, from a lax public opinion, are in danger of remaining ineffective, if left to the ordinary tribunals with their trials by jury. Finally, of late years, with the growing importance of conflicts between employers and employés arising from the in-

creased numbers and more perfect organization of trades unions and similar bodies, injunctions have been sought with a frequency that renders the writ one of the recognized weapons in such contests. The violence of the passions excited in the economic struggle between labor and capital, coupled with the fact that a successful resort to equity is rarely made except in behalf of the masters, has attracted a large share of popular attention to the application of this remedy in such cases. Public sympathy, which is ordinarily with the employés until alienated by acts of lawlessness and violence on their part, has seen in this action of the courts an undue interference with matters not properly within their cognizance. The sweeping nature of some of the decrees that have been entered in important and celebrated cases has fostered a public opinion now prevalent in many parts of the United States hostile to this exercise of jurisdiction. The name "government by injunction" has been applied to the growing practice of granting such relief; in some instances, at least, conditions connoted by the phrase have existed to a degree possibly justifying the reproach implied in the term; and the sentiment thus expressed has become of sufficient importance to assume a place in political platforms.

To an English judge, Vice-Chancellor Malins, appears to belong the distinction of first exerting the powers of a court of equity to protect employers against their striking employés. In *Springhead Spinning Co. v. Riley*, L. R. 6 Eq. 551, he granted an injunction restraining the defendants, the president and secretary of a trades

union and a printer employed by them, from posting placards and publishing advertisements urging workmen to keep away from the plaintiff's factory, where a strike, due to a reduction of wages, was in progress. The opinion in support of this decision was strongly disapproved by the English Court of Appeals in *Prudential Assurance Co. v. Knott*, L. R. 10 Ch. 142, and Chief Justice Gray of the Supreme Judicial Court of Massachusetts, now Mr. Justice Gray of the United States Supreme Court, declared that it appeared to be "so inconsistent with" the authorities "and with well settled principles, that it would be superfluous to consider whether, upon the facts before him, his decisions can be supported."¹ These criticisms were perhaps rather excited by the reasons stated for granting the injunction than by the principle of giving relief in cases of such a class; at least it is certain that the precedent thus made has been widely followed in later cases under circumstances substantially similar.

In America the resort to equity in labor troubles has been very common. *Sherry v. Perkins*, 147 Mass. 212, decided by the highest court of the state of Massachusetts, in 1888, is a leading case on the subject. There the plaintiffs, shoe manufacturers, complained of the acts of the defendants, officers and members of a trades union, in displaying before the plaintiffs' factory a banner urging lasters not to remain in or enter their employ. These acts were found at the hearing to be part of a scheme to prevent lasters employed by the plaintiffs from remain-

¹ *Boston Diatite Co. v. Florence Manufacturing Co.*, 114 Mass. 69, 70.

ing and to prevent others from entering into such employment. A decree was rendered restraining these acts on the ground that they were unlawful and injurious to the plaintiffs' business and constituted a nuisance against which a court of equity would grant relief. Reference was made by the court to *Springhead Spinning Co. v. Riley*, as not overruled although some of the language used in it had been criticised.

The development of boycotts and later of sympathetic strikes, so-called, stimulated the demand for a remedy by injunction. The practice of large masses of workingmen, not directly concerned and themselves having no grievance, uniting in concerted action to prevent the employment of persons not members of a labor organization, or to coerce employers whose men had struck for real or fancied wrongs, gave rise to hardships for which some relief was eagerly sought. A man whose business was threatened with destruction by the efforts of "organized labor" to compel him to submit to dictation not only as to the wages he should pay, but also as to whom he should employ, might in some cases cause criminal proceedings to be instituted; but such a man was without any practical civil redress at law. An action for damages was seldom of value owing to the financial irresponsibility of the defendants. The preventive powers of courts of equity were invoked to secure relief and the courts responded by freely granting injunctions.

In *Casey v. Typographical Union*, 45 Federal Reporter, 135, the Circuit Court of the United States in the state of Ohio entertained a bill by a publisher complaining

that the defendants, having conspired to boycott his establishment because he refused to discharge non-union printers and employ only union men, had in pursuance of this design published threats and appeals urging persons not to buy his newspaper and not to advertise in its columns. The court held that the acts complained of were illegal and granted an injunction restraining the defendants. In *Murdock v. Walker*, 152 Pa. St. 595, the Supreme Court of Pennsylvania upheld an injunction restraining the defendants, who were striking employés and persons sympathizing with them, from "gathering at and about plaintiffs' place of business, and from following the workmen employed by plaintiffs, or who may hereafter be so employed, to and from their work, and gathering at and about the boarding places of said workmen, and from any and all manner of threats, menaces, intimidation, opprobrious epithets, ridicule and annoyance to and against said workmen or any of them, for or on account of their working for the plaintiffs." A similar decision was rendered by the same court in the case of *Wick China Co. v. Brown*, 164 Pa. St. 449 (1894), upon substantially similar facts.

Barr v. Essex Trades Council, 53 N. J. Eq. 101 (1894), was a bill by a newspaper publisher against an association of combined trades unions complaining that because he used in his paper "plate matter," consisting of stereotype plates made in New York, the defendant had issued circulars calling upon all persons to refrain from buying his paper or advertising in it on pain of losing

the custom of all members of the associated unions. The court held that this was an unlawful interference with the plaintiff's business, threatening him with irreparable injury to his rights of property, and granted an injunction as prayed for.

Shoe Co. v. Saxey, 131 Missouri, 212, decided in 1895, was substantially similar to the cases in Pennsylvania already referred to. The Supreme Court of Missouri sustained an injunction against the use of threats and intimidation to prevent the plaintiff's employés from remaining with it. In *Davis v. Zimmerman*, 91 Hun, 489, an inferior court in the state of New York took the same position. Other decisions in other jurisdictions have laid down the same doctrine.

One of the most recent reported cases on the subject is *Vegeahn v. Guntner*, 167 Mass. 92, decided in the Supreme Judicial Court of Massachusetts in November, 1896. In this case the bill was filed against members of a labor organization which was supporting a strike by the plaintiffs' employés. The plaintiffs alleged the existence of a conspiracy to prevent them, by threats, intimidation, and social pressure, from obtaining workmen, and charged that a patrol was maintained before their premises to intercept applicants for employment. The majority of the court approved an injunction to restrain the defendants from using any scheme to deter persons from working for the plaintiffs or to induce persons to leave their employment, on the ground that such acts were an unlawful interference with their right to employ whom they would. Chief Justice Field dissented

on the ground that merely maintaining a patrol was not an act calling for the interference of equity, saying that if it was in violation of any city ordinance there might be a prosecution for that and the police could enforce the ordinance, and that if not such a violation it was doubtful if the act was illegal. Mr. Justice Holmes dissented chiefly on the ground that the facts showed no more than a legitimate use by the workmen of lawful means for enforcing their demands and carrying on the struggle for supremacy.

The years 1893 and 1894 witnessed a series of strikes on the part of railroad employés in which applications to courts of equity for injunctions were very prominent. The cases growing out of these strikes were brought within the jurisdiction of the courts of the federal government, because the corporations concerned were engaged in commerce between different states of the union and in carrying the United States mails, and in some instances because the roads were being operated by receivers appointed by those courts. The magnitude of the interests involved and the unusual strength of the labor organizations concerned, made the action of the courts a matter of widespread interest. The exceptional circumstances begot a resort to exceptional remedies and resulted in decisions which it may be difficult in some respects to support on principle.

In the case of Toledo, A. A. & N. M. Ry. Co. *v.* Pennsylvania Co., 54 Federal Reporter, 730, a bill was filed alleging that there was a strike of locomotive engineers on the plaintiff's road and that connecting

railways, to avoid strikes by their own engineers, threatened to refuse to take freight from the plaintiff. An order was made requiring the connecting lines, their officers and employes, to receive such freight. By an amendment in the nature of a supplemental bill the chief officers of the Brotherhood of Locomotive Engineers were made parties, and a preliminary injunction was sought restraining them from putting into operation rules of their association requiring engineers on connecting roads, under penalty of expulsion, to strike if required to assist in transporting freight received from a road upon which a strike of engineers was in force. The injunction sought was granted. The court declared that there was a legal duty to interchange freight, that the connecting lines and their employes could be restrained from violating this duty; and that the action of the Brotherhood in causing a violation through its rules could be restrained as a civil injury. The court admitted the right of engineers on connecting lines to withdraw from employment, but declared that any refusal while remaining in such employ to handle freight from the plaintiff's road would be a contempt. This distinction was subsequently acted on in dealing with attachments against certain engineers for breach of the injunction; those only being punished who, while remaining in the service of the connecting roads, refused to haul cars received from the plaintiff.

In December of 1893, the receivers of the Northern Pacific Railroad Company, who had been appointed by the United States Circuit Court in Milwaukee, announced

their intention to reduce the wages of their employés. This caused great discontent and a strike was threatened. The receivers, by petition in the suit in which they had been appointed, asked for an injunction restraining their employés, certain labor organizations and all other persons, from doing physical injury to the road, from conspiring and combining to leave the service of the receivers in concert, or inducing others to do so, and from ordering, recommending, approving or advising others to quit the service of the corporation on the day fixed for the strike. Such an injunction was granted, the court taking the view that a "strike" was necessarily illegal, and that although employés could not be compelled to remain in the service of the company, they could be restrained from quitting the service in concert and in such a manner as necessarily to injure the road.¹ On appeal the decision of the lower court was reversed as to the necessary illegality of a strike and the injunction modified so as not to restrain merely advising and encouraging a strike, or striking in concert as a result of peaceable argument and persuasion, when not done with the intent to cripple and injure the road.²

The railroad strikes culminated, in June of the year 1894, in the attempt of the American Railway Union to paralyze the entire railway service of the country as a means of supporting certain striking employés of the Pullman Palace Car Company. This contest, perhaps

¹ *Farmers' Loan and Trust Co. v. Northern Pacific R. R. Co.*, 60 Federal Reporter, 803.

² *Arthur v. Oakes*, 63 Federal Reporter, 310.

the most extraordinary in the history of the relations between labor and capital, originated in a dispute between the Pullman Company and some of its hands. The American Railway Union determined to support the strikers, and for this purpose ordered its members to refuse to work upon any train to which a Pullman car was attached. As nearly all the railroads centering at Chicago were under contract with the Pullman Company to draw its sleeping cars and parlor cars, a conflict immediately resulted between the railroads and their employés, and a strike of vast proportions among train hands followed. Disorder and violence became widespread. By the interruption of the railway service the transportation of the mails, as well as commerce between the states, was seriously interfered with. On July 2 the United States appeared as a complainant before the Circuit Court of the United States in Chicago and filed a bill alleging the interference by the strikers and officers of the Union with interstate commerce and the carriage of the mails, pursuant to a conspiracy in restraint of trade, and seeking an injunction. The bill was filed against certain named defendants, officers of the American Railway Union, and sought an injunction against them and all persons not named and unknown who might combine with them and against all other persons whomsoever, restraining them from any interference, by violence or otherwise, with the operation of the railroads specified in the bill. Similar proceedings were begun in other cities. Injunctions were issued as prayed for, and subsequently proceedings for contempt were instituted

against various persons, and punishments inflicted. Pursuant to such proceedings one Debs, the president of the Union, and some of his fellow officers were committed to jail.¹ They applied for a writ of habeas corpus, which was heard in the Supreme Court of the United States. That court upheld the jurisdiction of the court below to grant the injunction in question, and in a unanimous opinion by Mr. Justice Brewer approved the course of proceedings.²

Many questions of the utmost interest and importance are involved in the decisions which have been thus cursorily reviewed. Questions of a social and ethical nature arise in determining the extent to which injury to an employer resulting from the attempt of employes to better their condition may be justified. The doctrines of the criminal law as to conspiracies require careful examination in dealing with the right of a labor organization to support its members in carrying on a strike. The scope of the so-called anti-trust law enacted by the Congress of the United States in 1890, under which the proceedings of the federal courts have been in part supported and the right of the government to institute proceedings on its own behalf present grave questions of statutory construction and constitutional authority. Some propositions may be deemed established, and others, dependent upon varying views of public policy, can perhaps never be settled except as to the facts of specific cases. It can no longer be doubted that laboring men

¹ *United States v. Debs*, 64 Federal Reporter, 724.

² *In re Debs*, 158 U. S., 564.

can associate themselves in organizations for the improvement of their condition; that they may lawfully strike to obtain better wages or other advantages, provided they do not resort to acts of violence; that equity will under no circumstances, even if there is an express contract, require the continued performance of personal services by employ  s. Precisely how far striking workmen and their associates may go in trying to induce others to refrain from taking their places, as a means of rendering their strike effective, is uncertain. The questions presented in such cases are analogous to those discussed in the celebrated English case of *Mogul Steamship Co. v. McGregor*, (1892) Appeal Cases, 25, in which a steamship owner sought unsuccessfully to recover damages caused by the defendants in carrying on a vigorous competition in the tea trade, pursuant to an alleged conspiracy to injure the plaintiff, who refused to join a combination formed by the defendants. These are questions of degree, and the decisions of different courts may be expected to vary with the views prevailing at different times and in different communities.

It must also be deemed to be established that courts of equity will interfere by injunction to protect employers from some classes of injuries threatened by the action of their employ  s and those sympathizing with them. Under what circumstances and to what extent such protection can and should be granted depends upon the general principles of equity jurisprudence. The courts in America, and especially the federal courts, have shown a disposition to extend their powers beyond any limits

heretofore recognized. In seeking to restrain acts in their nature purely criminal, and in punishing by summary proceedings for contempt persons accused of committing those acts, they have been charged with usurping the functions of the criminal law; in seeking to restrain all persons whether parties to the suit or not and whether identified or not, they have been charged with issuing decrees legislative rather than judicial. The case of the *United States v. Debs*, above referred to, furnishes an example of both those alleged usurpations of power. From the approval given by the Supreme Court of the *United States* to the injunction there issued the case is likely to become a precedent of great weight. It may fitly be taken as typical of the most extreme exercise of equity powers in these respects. If the course there followed can be supported the principles of equity jurisprudence have received an important extension which may render "government by injunction" more than a mere epithet.

The preliminary injunction issued in the case of *United States v. Debs*, enjoined certain defendants named in the bill "and all persons combining and conspiring with them, and all other persons whomsoever," absolutely to refrain and desist from certain acts, among others "from in any manner interfering with, hindering, obstructing, or stopping any mail trains, express trains, or other trains, whether freight or passenger, engaged in interstate commerce or carrying freight or passengers between or among the states; . . . and from in any manner interfering with, injuring, or destroying any of

the property of any of said railroads engaged in or for the purposes of, or in connection with, interstate commerce, or the carriage of the mails of the United States, . . . and from injuring, destroying, or in any way interfering with, any of the signals or switches of any of said railroads;" and from using threats, intimidation, force or violence to induce employ  s to quit the service of the railroads or to prevent persons from entering the employ of the railroads. This injunction, it was ordered, should be in force as to all persons not named in it from the time they severally had knowledge of it. Informations for contempt were subsequently filed against certain of the defendants named as parties to the suit, and also against other persons not mentioned in the bill or injunction, all of whom with one exception were convicted and punished. The acts charged against the defendants in the informations were continuing in defiance of the injunction to order strikes and initiate violence and disorder and thereby causing great destruction of property and loss of many lives.¹

The injunction thus sought to restrain the commission of acts of violence which would be flagrant breaches of public order and serious criminal offences; acts which the ordinary machinery of police administration would if possible prevent by physical interference and punish with heavy penalties if committed. It sought further to restrain all persons whomsoever from committing any

¹ The facts stated in this paragraph appear in the printed record of the case in the Supreme Court of the United States, to a copy of which the writer has had access.

of those acts. Not only did a court of equity therefore undertake by its process to grant a cumulative remedy for that which the criminal law already covered, but it undertook to make its decree coördinate in extent with the existing legislative prohibitions. The persons not named in the bill against whom the injunction was directed were not specific individuals unknown by name but otherwise identified; they were all persons who might thereafter do any of the acts described in the injunction. In like manner the prohibition was not directed against specific threatened acts of interference with the operation of the railroads, but against all acts of that character that might thereafter be contemplated by any persons.

It is not one of the functions of a court of equity to prevent the commission of threatened crimes. In *Gee v. Pritchard*, 2 Swanst. 402, Lord Eldon said: "The publication of a libel is a crime; and I have no jurisdiction to prevent the commission of crimes; excepting, of course, such cases as belong to the protection of infants, where a dealing with an infant may amount to a crime,—an exception arising from that peculiar jurisdiction of this court."¹ Chancellor Walworth in *Mayor, etc., of Hudson v. Thorn*, 7 Paige, 261, declared: "Again; it is no part of the business of this court to enforce the penal laws of the state, or the by-laws of a corporation, by injunction, unless the act sought to be restrained is a nuisance." Threats of violent interference in breach of the public peace or of other criminal acts injurious to

¹ P. 413.

property do not furnish a foundation for an injunction. In *Montgomery & W. P. R. R. Co. v. Walton*, 14 Ala. 207, the plaintiff corporation complained that the defendant prevented it from taking possession of land properly condemned for its use and from prosecuting the construction of the road, by threats that he would kill or injure the workmen, and prayed for an injunction. The court refused to grant relief saying: "The rule is too well established to admit of controversy, that equity cannot interpose by way of injunction, to restrain the commission of a personal trespass, although *it may be threatened*. . . . The courts of law have complete jurisdiction to punish the commission of crimes, and can interpose to prevent their commission by imprisoning the offender, or binding him to keep the peace. But equity has no jurisdiction over such matters, at least a court of equity cannot entertain a bill on this ground alone." In *Sparhawk v. Union Passenger R'y Co.*, 54 Pa. St., 401, the plaintiff complained that the defendant was running its cars on Sunday in violation of law and that the noise interfered with his use of his property. The court, however, said: "For this there is a remedy in the penal laws, and not by proceedings in equity, if we regard the facts as we ought to do."¹

The jurisdiction of equity over public nuisances has been relied on as justifying interference by injunction where the acts threatened were criminal. It is indeed true that by the weight of authority the jurisdiction is not ousted merely because as in the case of a public

¹ P. 424.

nuisance the threatened act may be the subject of an indictment. But the foundation of the jurisdiction over public nuisances, as of all jurisdiction in equity, is the greater efficacy of the equitable remedy. By a preliminary injunction to restrain a threatened purpresture or obstruction of a highway or establishment of offensive trade, a court of equity can interfere immediately to prevent the continuance or completion of an act which can not be dealt with at law until irreparable injury has been caused. The injunction does not merely add a cumulative penalty, nor does it substitute the interference of officers executing the process of the court for the interference of the municipal police. Such an injunction may have a legitimate effect, while an injunction against committing an assault, malicious injury to property by violence, or other overt breach of the peace can have no tendency to prevent the act enjoined except by fear of punishment. That sanction the law already attaches to its prohibition of the same act, and whatever will justify punishment for contempt in such a case will equally justify punishment for the criminal act which constitutes the contempt.

The destruction of the rolling stock or of any part of the works of a railway or the forcible interference with its operation may cause such an obstruction of commerce as to be a public nuisance ; but the law already provides for the protection of property and persons from violence. The executive power of the state, through its police, and if necessary its military force, is bound to prevent if possible such acts and to punish them, if committed, by

appropriate proceedings in the criminal courts. To justify the interference of a court of equity it must be shown that by the exercise of chancery powers a more complete remedy can be afforded. This is not shown by calling the threatened injury a public nuisance, for in every case of nuisance it is still necessary to show that there is some ground for asking relief in equity, and that ground must be the greater adequacy of the remedy. But where acts of violence are enjoined the remedies at law and in equity are in fact the same. The injunction is only a prohibition, for violation of which a punishment by fine or imprisonment may be inflicted, and that prohibition and liability to punishment already exists at law.

The legislatures of several states, regardless of the general principles of equity jurisdiction, have sought by statute to extend the jurisdiction over public nuisances so as to use the process of courts of equity for the suppression of crimes. In 1880 the state of Kansas by constitutional amendment prohibited the manufacture and sale of intoxicating liquors. By a law intended to enforce this provision it was declared that any building used for the prohibited traffic should be deemed a public nuisance and that its use might be enjoined and the nuisance abated upon a complaint in equity. This statute was attacked as unconstitutional on the ground that as no provision was made for a trial by jury it deprived persons of their property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States, and that it also vio-

lated the provisions of the state constitution securing persons the right to a trial by jury. In *Kansas v. Ziebold*, 123 U. S. 623, the Supreme Court of the United States held the law constitutional. The court said that the legislature had authority to determine what constituted a public nuisance, that courts of equity had jurisdiction over public nuisances, and that as their jurisdiction has always been exercised without the intervention of a jury there was no violation of the constitutional guarantees.

A similar decision was rendered by the same court in *Eilenbecker v. Plymouth County*, 134 U. S. 31. The plaintiffs in error in that case had been committed in proceedings under a similar statute in the state of Iowa for contempt in violating a preliminary injunction against the use of premises for the unlawful sale of liquor. The court held that as proceedings for contempt had always been conducted without a trial by jury there was no constitutional objection. Similar decisions were rendered by the Supreme Judicial Court of Massachusetts in *Carleton v. Rugg*, 149 Mass., 550, and by the Supreme Court of New Hampshire in *State v. Saunders*, 66 N. H., 39.

These authorities must be deemed to establish that it is within the power of the legislature to make use of the peculiar powers of courts of equity to suppress at least some classes of crimes; but they do not establish that in the absence of statutory provisions courts of equity should exercise such jurisdiction in such cases. To warrant this it must be shown that the remedy at

law is inadequate. Jurisdiction in equity is for the adjudication of civil rights. Preliminary injunctions are to preserve the subject of litigation in *statu quo*, and prevent irreparable injury during the pendency of the suit. The mere fact that the act enjoined is criminal may not oust the jurisdiction of the court, since every crime involves also an infraction of civil rights. But to justify the interference of a court of equity by preliminary or by perpetual injunction it must be shown that the injunction will prevent some threatened injury for which the law affords no adequate relief. An injunction against destroying property by violence or similar offence against the criminal law accomplishes no such result. It can deter only through the risk of incurring the same sort of penalties that the law imposes for the same act. If the injury were threatened in the exercise of an alleged right there might indeed be more ground for the interference of equity since the act might then in some circumstances lose its criminal character, yet by a strange perversion of thought in one case at least the admitted criminality of the threatened acts has been relied upon to justify granting an injunction. In *Davis v. Zimmerman*, 91 Hun, 489, 494, the court in support of its decision said of the defendants: "They do not assert that they have a right to intimidate, by threats or by violence, persons in the employment of the plaintiff or those who seek his employment, nor do they claim that they have a right to destroy the plaintiff's property, and it is only from doing and conspiring to do such acts that they are restrained."

A looseness of thought is apparent in the decisions discussing this use of injunction, which has tended to conceal the principles involved. Learned judges have spoken as if courts of equity could prevent acts in some manner other than by fear of the penalties attending the violation of an injunction. Mr. Justice Miller in *Eilenbecker v. Plymouth County*, 134 U. S. 31, 40, said: "Certainly it seems to us to be quite as wise to use the processes of the law and the powers of the court to prevent the evil, as to punish the offence as a crime after it has been committed." Such a phrase suggests that by injunction the evil can be prevented otherwise than by threatening to punish the offence. Yet this was said in a case in which the process of the court had been used to punish by fine and imprisonment for contempt, an act punishable in precisely the same way by the criminal law. The purely cumulative effect of such an injunction was well set forth by Chief Justice Field of the Supreme Judicial Court of Massachusetts, then Mr. Justice Field, in the case of *Carleton v. Rugg*, 149 Mass. 550. Delivering, in behalf of himself and Mr. Justice Devens and Mr. Justice William Allen, a dissenting opinion notable for its logical force and lucidity, he observed: "The injunction issued in this case, and probably the only one that could have been issued, is one enjoining the respondents from using, or permitting to be used, the building, place, or tenement for the illegal keeping or sale of intoxicating liquors. The Public Statutes prohibit such a use as a crime, and the only effect of the injunction is to subject the respondents to the process

used for punishing persons guilty of violating injunctions, in addition to or in substitution for criminal process. The Legislature apparently thought that a remedy in equity would be more speedy, or more certain, or more efficient, than that by complaint or indictment. The issuing of the injunction of itself adds nothing to the prohibition of the statutes, but the intention plainly is to call into use the peculiar process employed by courts of equity in punishing persons guilty of wilful violations of injunctions.”¹

The only respect in which the remedy in equity can in such cases be more adequate than the remedy at law is in the greater certainty or celerity with which punishment will be inflicted. Ordinarily by inadequacy of remedy is not meant the danger that the courts will not enforce the law. In early times it is true the Lord Chancellor assumed jurisdiction in some cases upon the ground that the defendant's power was such that he could not or would not be punished by a court of law for committing a threatened offence. Thus in the time of Henry VI a plaintiff might regularly have a subpœna against a great man to keep the peace.² This exercise of the royal prerogative was vehemently opposed and has long been obsolete.³ In a case before the Supreme Court of Georgia this obsolete jurisdiction seems to have been revived. It was advanced by the court as a ground for taking jurisdiction in equity where an in-

¹ P. 559.

² Crompton on Courts, 42a.

³ Spence's Equitable Jurisdiction, 343-345, 684 *et seq.*

dictment would lie, that " This indictment would necessarily be against the city officers, or those who act under them, and in all probability the influence and moral integrity of these gentlemen, which would necessarily be brought to bear against a criminal proceeding, would more than likely protect them from a conviction as criminals."¹ But this suggestion cannot be regarded as an authoritative statement of any existing principle of equity jurisdiction. It is not to be presumed that a court of law will fail to administer justice in cases expressly cognizable by it, or that any department of the government will fail in the performance of its duties. The supposed probability of such failure cannot afford a ground for assuming jurisdiction. Such a doctrine would be contrary to any rational conception of the relations of the judiciary to other departments of the government, or of the distinction between law and equity. In *Attorney General v. Sheffield Gas Consumers Co.*, 3 De G. M. & G. 304, application was made for an injunction against tearing up the highway. It was argued in favor of the motion that forcible resistance might be offered and breaches of the peace result. Sir George Turner in denying the application observed: " Something has been said in the course of the argument of the danger to the public peace which may ensue from the non interference of this Court ; but surely this Court cannot suppose that there is an inadequacy of the civil power to preserve the public peace. I say nothing on the question whose fault it will be if

¹ *Mayor, et al of Columbus v. Jaques*, 30 Ga. 506, 513.

this disturbance of the public peace takes place.”¹ Lord Justice Knight-Bruce touching upon the same point remarked: “Something has been said on the subject of riots or unlawful assemblies, of skirmishes and battles between the opposite forces, native and auxiliary, of the contending companies, as likely to be rife and serious unless we shall interfere, but into that part of the argument I consider it unnecessary to enter.”²

When analyzed the sole inadequacy of the remedy at law as compared with the remedy in equity in these cases will be found in the fact that trials in the former are by jury. It is the existence of those safeguards which have been thought essential to individual liberty that renders punishment of an act as a crime less certain and less swift than punishment of the same act as a contempt. It is because of the prejudice of juries that laws to suppress the sale of liquors may be more effectively enforced through the machinery for preventing public nuisances than by the ordinary course of the criminal law, and it is to avoid the intervention of a jury in such cases that the powers of courts of equity have been called in by legislative enactments. In the dissenting opinion in *Carleton v. Rugg*, 149 Mass. 550, already quoted from, Chief Justice Field said: “Indeed, there are many indications that the principal reason why the statute was passed was to avoid a trial by jury.”³ Mr. Justice Valentine of the Supreme Court of Kansas, in a

¹ P. 323.

² Pp. 330, 331.

³ P. 560.

case arising under the Kansas statute above referred to, said: "It would seem that one of the main objects of the prosecution in instituting this proceeding in a court of equity in contradistinction to a court of law is, to obtain a judicial determination announcing the doctrine that an adequate remedy exists and will be exercised, in equity and by injunction, for the suppression of all illegal traffic in intoxicating liquors, *independent of juries and of the jury system*. . . . It would seem that the prosecution has a very great distrust of juries, and would wish wholly to ignore them in all prosecutions for the suppression of the illegal traffic in intoxicating liquors."¹

The same desire to avoid a trial by jury induces a resort to equity in cases of dispute between employers and employés. If proceedings for contempt were tried before a jury the injunctions issued would be recognized as futile; such efficacy as they have in preventing acts of violence arises solely from the greater probability of a conviction for contempt in a trial by a judge alone, without right of appeal, than of conviction by a jury likely to sympathize in some degree with the offender.

It is difficult to believe that jurisdiction in equity can be supported on the ground that a judge in chancery will probably upon a given state of facts reach one conclusion, while a jury at law on the same state of facts is likely to reach a contrary conclusion. Courts of equity have always hesitated to usurp the functions of a jury. Lord Eldon long declined to take jurisdiction in cases of

¹ *State v. Crawford*, 28 Kansas, 726, 740, 741.

nuisance because the existence of the nuisance ought to be determined by a jury. The necessity of a prior recovery at law still exists in many branches of equity jurisdiction. Injunctions against slander or libel were consistently refused in England until the law was changed by statute¹ and in America are still refused,² although injury to the plaintiff's business is threatened, upon the ground that to preserve freedom of speech and of the press the matter should be referred to the decision of a jury.

Can it then be contended that in other cases involving rights no less important the likelihood that a jury will deny punishment affords a ground for seeking relief in equity?

The information for contempt upon which Debs and his associates were committed charged them with violating the injunction by continuing to order and direct strikes, thereby causing the destruction by fire of at least one thousand freight cars, the burning of signal towers and the sacrifice of many lives. They were charged with a conspiracy, in the carrying out of which these acts were done. If the allegations of the bill on which the injunction was issued were true an open defiance of the criminal law was threatened. If the allegations on which the attachment was issued were true, there had been such an open defiance. The injunction added nothing to the penalties under which the defendants acted save to subject them to trial and punishment by

¹ *Bonnard v. Perryman*, (1891) 2 Ch. 269.

² *Kidd v. Horry*, 28 Federal Reporter, 773.

the court upon a summary proceeding. If the difficulty of securing convictions for crime by a jury is so serious as to render it expedient to supplement the agencies of the criminal law by a resort to the power of courts of equity, the remedy should at least be applied by the legislature. Courts of equity cannot with propriety or safety extend their jurisdiction under the guise of protecting property, by issuing decrees imposing merely cumulative prohibitions against that which the criminal law already forbids, in order summarily to try and punish offenders for acts in violation of those prohibitions.

The sweeping terms of the injunction issued in the Debs case as to the persons to whom it was addressed are no less significant than the nature of the acts enjoined. It has already been mentioned that the bill was filed against certain named defendants. A subpoena in regular form was addressed to and served upon these individuals. The injunction issued was also addressed to these persons but it purported to restrain in addition "all persons combining and conspiring with them, and all other persons whomsoever." The informations for contempt of this injunction were filed not only against persons named as defendants, but against others not named in the bill, who were also charged with doing acts in violation of the order of the court. The record does not even show that these individuals, not parties to the bill, fell within the description of persons combining and conspiring with the named defendants. It must be assumed from the terms of the order that the court intended to restrain such persons although acting

independently, and that it punished them as such independent actors. We have therefore to consider the proposition that a court of equity may *ex parte* upon the motion of a plaintiff issue an order restraining all persons from doing acts of a specified description although such persons are not parties to the cause, are in no way connected with the parties, are not identified in any way, and cannot be identified except by the fact of their violating the injunction.

In the Debs case, the Supreme Court of the United States did not consider in its opinion this particular question. In the case of *In re Lennon*, 166 U. S. 548, however, the court held that an injunction in similar terms was binding upon one not named as a party to the bill who had notice of it. Lennon was an engineer in the employ of the Lake Shore & Michigan Southern Railroad Co., one of the roads against which the injunction above referred to in *Toledo, A. A. & N. H. R'y Co. v. Pennsylvania Co.*, 54 Federal Reporter, 746,¹ was issued. Having notice of that injunction, he yet refused, while remaining in the employ of the Lake Shore Company, to haul one of the plaintiff's cars. An attachment for contempt was issued against him, and a fine of fifty dollars was imposed. The case was taken to the Supreme Court to review a decision of the Circuit Court of Appeals upholding the jurisdiction of the lower court to inflict this punishment. In behalf of Lennon, it was contended that the Circuit Court which granted the injunction acted without jurisdiction in the

¹ Above, p. 12.

proceedings against him for contempt, on the ground, among others, that he was not a party to the suit in which the injunction was issued. The Supreme Court said, in overruling this objection: "To render a person amenable to an injunction it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice."¹

The doctrine thus announced is of the highest importance. If adhered to, it involves a momentous extension of the scope of injunctions and of the powers exercised by courts of equity, believed to be unwarranted by precedent, and to constitute a departure from the rules of procedure that have heretofore prevailed in chancery.

Courts of equity, like courts of law, are established for the determination of controversies between individuals. The power to issue preliminary injunctions is incidental to the power of determining such controversies. The right to lay down general rules for the government of the community, to declare *ex cathedra*, in advance of any contentious proceedings in which the question arises, what may and what may not lawfully be done, to impose on the whole community a duty to refrain from doing a certain act is in its nature a legislative right. The jurisdiction of every court depends upon the existence of a cause in which it is called upon to adjudicate. Except in the instances of courts created to decide

¹ 166 U. S. 554.

actions *in rem* the scope of the jurisdiction is limited to the persons who are actually or constructively before the court. By legislative enactments, the constitutionality of which has been doubted, but may here be conceded, courts of equity have in some instances been authorized after notice by publication to make decrees binding upon all the world, establishing certain facts as to property; but such decrees are supported only by the legislative power authorizing them. In the absence of statutory provisions the jurisdiction of equity is wholly *in personam*, and can be exercised only against those persons who are parties to the litigation. A party to the suit is brought before the court by the service of process. In the case of a preliminary injunction issued *ex parte* service of the injunction is a service of process. The injunction is an order of the court addressed to the individual, and the individual is one between whom and the plaintiff the controversy exists. When, however, such an injunction is issued addressed to "all persons whomsoever" it can in no sense be said that an individual not named or described in the bill as a party to the suit becomes a party upon having notice of the order. If such an individual is not in fact engaged in the acts sought to be restrained, there is no pretence for saying that a controversy exists between him and the plaintiff. Such a controversy may arise if he subsequently engages in the acts complained of, but it is difficult to conjecture how, by reason of such a subsequent act, he can be deemed to have been a party to the controversy at an earlier time. It has never, it is believed, been contended that the final

decree of a court of equity was binding upon persons not parties to the suit and not claiming under persons who were parties. It is certainly anomalous that an interlocutory order of the court should be given a force which the final decree cannot have. If an injunction restraining the defendant and "all persons whomsoever" from going upon the plaintiff's land were made perpetual, would one not a party to the suit but having notice of the decree, who claimed a right of way over the land, be in contempt for thereafter using his alleged easement? If not how can it be said that by the same act such a person would be in contempt of a preliminary injunction in the same terms? The test cannot be the actual existence of the right asserted, for the very object of the suit is to determine that right, and it is a fundamental principle that violation of an injunction is not excused, however erroneously or improvidently the decree may have been made, provided the court had jurisdiction. Nor can the test be whether the act enjoined is a crime as well as a civil wrong unless the doctrine is to be asserted that equity interferes to prevent the commission of criminal acts because they are criminal, and not merely because and when they are invasions of rights of property.

It has repeatedly been declared in the past that injunctions could issue only against parties to the suit and those persons who acted for them.¹ Lord Eldon in *Iveson v. Harris*, 7 Ves. 251, 256, said: "And I have no conception, that it is competent to this Court to hold a man

¹ *1 Maddock's Ch. Pr.*, 175.

bound by an injunction, who is not a party in the cause for the purpose of the cause. The old practice was, that he must be brought into Court, so as, according to the ancient laws and usages of the country, to be made a subject of the writ. The jurisdiction in lunacy is quite distinct." And again: "I find, the Court has adhered very closely to the principle, that you cannot have an injunction except against a party to the suit."

The ordinary form of decree by which the defendant, his agents, servants, attorneys, etc., are restrained, does not violate this principle. The acts of agents, servants and attorneys, are done in the right of the master. The restraint put upon him is an adjudication, for the purposes of the order, of his individual rights, and other persons may properly be directed not to do acts in the exercise of his rights. Such persons are guilty of a contempt even if the injunction does not in terms restrain them.¹ If the same person stands in such a relation to two individuals, only one of whom is a defendant in the suit, he is restrained only so far as he acts for the one who is a party to the proceedings.² In these cases the contempt in fact consists in aiding or abetting the defendant, against whom a decree has been made, in violating the order of the court. The servant is guilty not because the act *per se* is forbidden, but because the master is enjoined and the servant does the act for the master. Indeed, both are guilty of a contempt if the master is cognizant of what the servant does.

¹ Lord Wellesley v. Earl of Mornington, 11 Beav. 181.

² People v. Randall, 73 N. Y. 416, Slater v. Merrill, 75 N. Y., 268.

It has been argued that because a court would commit for contempt one not a party who aided in the violation of an injunction that, therefore, the injunction itself could be extended to restrain persons not parties. Such an argument overlooks an important distinction. If a defendant has been enjoined from doing an act it is no doubt a contempt for any person to abet him in performing that act. The abettor is guilty of aiding in a defiance of a lawful order of the court. Since it was competent for a court to restrain the defendant, any one assisting him to violate or evade the restraint obviously acts in defiance of the court and frustrates its process. Such a person may properly be committed for contempt, not as having himself violated the injunction, but for assisting to defeat the action of the court. But the order of the court restraining a defendant from doing an act imposes no obligation on an independent individual to refrain from doing the same act in the assertion of a right claimed by him. It cannot be contended, to revert to an illustration already used, that, because the defendant in a suit has been enjoined from trespassing on the plaintiff's property, another person not a party to that suit is in contempt for using a right of way claimed by him over the same land. A court of equity does not, in the absence of special statutory authority, seek to establish the existence or non-existence of rights as to all the world; and it is not a contempt to do an act which another has been expressly enjoined from doing, even with full knowledge of the injunction. This principle is well illustrated by the case of *Boyd v. State of*

Nebraska, 19 Neb., 128. A street railway company secured an injunction against contractors engaged in building a sewer for the city of Omaha, restraining them from destroying the plaintiff's tracks at their intersection with the line of the sewer. The mayor of the city caused other persons to do the work thus enjoined and an attachment for contempt was thereupon issued against him. The court held that no contempt had been committed, since the injunction restrained only the persons who were parties to the proceedings in which it was issued. The city was not a party to the suit and did not do the acts complained of as the subordinate or employé of the defendants. "Had the plaintiff in the original case," said the court, "desired to bind the city and its officers as well as the contractors by his proceedings in injunction he should have made the city a party to this suit."¹

The common practice upon appointing receivers of enjoining all persons from interfering with the property is not founded upon any doctrine inconsistent with the principles under consideration. By the appointment of a receiver the court takes into its custody all the property belonging to the defendant within its jurisdiction. Any interference with the property is an interference with the action of the court. All persons are bound at their peril to refrain from acts which may hinder the court or its officers in the execution of their duties. Any act which constitutes such an interference or hinderance is a

¹ P. 134 ; see also, *Newcomer v. Tucker*, 89 Iowa, 486 ; *Pearson v. District Court Cass County*, 90 Iowa, 756.

contempt, not because it violates an order of the court, but because it embarrasses the court in the performance of its functions. The contempt is committed although no injunction or restraining order against the act done has been issued,¹ and although the persons accused had no intention of interfering in any way with the operations of the court.²

The strong repugnance which every law-abiding citizen must feel for acts of lawlessness renders the task of criticising proceedings designed to preserve order somewhat invidious. None of the persons who have been punished for contempt in violating injunctions such as have been discussed here have been worthy of any personal sympathy. The chivalry of supporting fellow workmen in a contest with employers ceases to excite admiration when it is directed to the wanton destruction of property and to mob violence. Debs, who for a time posed as supreme arbiter over the welfare of millions of his fellow citizens was, in fact, taken red-handed in a flagrant and audacious defiance of the laws and merited the most severe punishment which the penal statutes authorized. But for the very reason that law and order were thus outraged it was the more necessary to see that the measures of repression used were fully warranted. It is no light matter that suspicion even should rest upon the judiciary of warping principles to meet the supposed exigencies of cases as to which the strongest passions of the community are aroused.

¹ *In re Higgins*, 27 Federal Reporter, 443.

² *In re Doolittle*, 23 Federal Reporter, 544.

The power of courts to punish by summary proceedings for contempt all persons who obstruct the administration of justice or disobey the lawful orders of the court has often been described as the most unrestrained power exercised in our system of government. Such matters are tried by the court itself and without any right of appeal for error of fact or law. This power is absolutely essential to the efficient administration of justice. It behooves the judiciary, therefore, not only to exercise it with discretion, but to avoid extensions of jurisdiction which may lead to the necessity of exercising this power in matters properly cognizable by the courts of criminal law and by a jury. A community in which the jury system is still preserved and regarded as a bulwark of liberty will not tolerate encroachments on the part of courts of equity by which in those very cases in which a large part of the community is most disposed to rely upon the jury as a check upon the supposed partiality of the courts, the process of punishment by contempt is made to take the place of trial by jury. The machinery essential to the ordinary working of the courts is in danger of being wrecked by its use for such extraordinary emergencies.

It is strangely inconsistent with established principles that courts of equity should take jurisdiction in order to prevent the ultimate issues being tried by a jury; that they should grant injunctions which appear at least to be designed primarily as a means of drawing to the court power to punish by proceedings for contempt acts which should have been prevented by the executive

authorities and should be punished by the criminal law. A preliminary injunction granted not as an incident to a controversy between individuals, not seeking to restrain a defendant until the rights between him and the plaintiff can be ascertained, not acting upon known persons to prevent them from doing certain acts, but seeking to throw the aegis of the court over certain property so as to protect it from all persons whatsoever, is of itself an anomaly in chancery procedure. When such an injunction is granted under circumstances which preclude the possibility of its enforcement except by assuming the duty lodged with the executive of preserving public order, and apparently largely for the purpose of assuming that duty, it presents a serious menace to the very framework of the government.

The Supreme Court of the United States has given its great authority in support of the course pursued in the Debs case. Other courts have unhesitatingly followed the doctrines thus laid down. The weight of authority in America appears at present to be overwhelmingly in favor of this extreme exercise of the power of equity. Many public writers have applauded the action of the federal courts in interfering by injunction where the local authorities were supine or secretly in sympathy with the criminals. But such a departure from principle cannot properly be permitted to pass unchallenged. It should not be forgotten that no course is more dangerous than to justify the exercise of a doubtful power by the supposed necessities of a particular emergency. Courts must adhere to fixed principles, lest the departure justified to-day by a present emer-

gency, itself justify to-morrow a departure inspired by some sinister motive. Courts of equity can in no event be made to replace permanently an able and honest administration of its duties by the executive department of the government. The attempt to do so may seem to achieve a temporary success, but ultimately will result either in a lowering of the standard of the judiciary or a disregard of its decrees. To those who recall the lawlessness prevailing in Chicago during the strikes in 1894 the conception of a court of equity guarding by power of injunction the vast railroad properties in the city will seem almost grotesque and not far removed from the parallel suggested by counsel for Debs of issuing an injunction during the Civil War to stop the advance of Lee's invading army. The fear of proceedings for contempt did not prevent the burning of over a thousand freight cars and the loss of many lives. But if the practical utility of the course pursued could be demonstrated it would still, it is submitted, remain true that a procedure involving the issue by a court of equity of an edict binding upon all persons, enjoining acts already forbidden by statute or by common law, designed for the purpose of punishing all persons who should violate those prohibitions, thus reinforced by the decree of the court, would be an innovation upon the established course of equity procedure and jurisprudence, such as legislative authority alone could justify, and then to invest courts of equity with such a power would be an experiment fraught with the greatest danger to our institutions and giving little promise of permanent success.

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BY

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ECONOMIC ASPECTS OF RAILROAD
RECEIVERSHIPS

PREFACE.

The subject of railroad receiverships has had considerable attention from two points of view, that of the lawyer and that of the investor in railroad securities. In recent years, however, the increasing number and magnitude of railroad receiverships has made their relation to the public a matter of no less importance than their bearing on investments. It is rather to present some data for consideration of these more general economic aspects, than in hope of adding anything to the technical and financial treatment of the subject that this essay has been undertaken.

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ECONOMIC ASPECTS OF RAILROAD RECEIVERSHIPS.

CHAPTER I.

THE NATURE OF RECEIVERSHIPS AND THE FUNCTIONS OF RECEIVERS.

A receiver is "a person appointed by a court or judicial officer to take charge of property during the pendency of a civil action, suit, or proceeding, or upon a judgment, decree or order therein, and to manage or dispose of it as the court or officer may direct."¹

If a piece of property is for a long time in litigation, the one actually in possession may consume the usufruct, which may prove to have rightfully belonged to the adverse party. If the case appears likely to go against the possessor, there is a very natural temptation for him to extract the maximum immediate profit even to the serious impairment of the permanent value of the property. Even when the litigation does not involve a contest over the title to the property, but is only a process for securing possession, as, for example, in the case of a foreclosure of a mortgage, the somewhat extended period which elapses before the completion of the proceedings, gives the possessor an opportunity to abuse the property

¹ Codes and General Laws of Oregon (1885), § 1060.

in his own interest. To guard the interest of the rightful owner, therefore, courts, in a great variety of cases, have temporarily sequestered the property, putting it into the hands of an officer of the court, to care for until the time comes to deliver it, with its accrued increments, to the owner.

All the leading principles in relation to the ordinary receivership were established¹ more than half a century before the beginning of railroad construction. When the railroad era began, railroads were constructed more rapidly than industrial conditions could be adapted to these changes, and failures became very frequent. In the litigation which ensued over these insolvent roads there was, therefore, found ready to hand a well-developed system of equity procedure which it was very natural to apply to the new cases.

"Previous to the enactment of the Railway Companies Act of 1867 the English courts were extremely averse to the appointment of receivers with power to operate railroad property."² But these scruples have not generally obtained in the United States; "in this country the appointment of receivers with power to manage and operate railroads during the pendency of the controversy is rather the rule than the exception."³ Even at an early day in the history of American railroads, appointments of receivers were not infrequent, the most famous of the early receiverships, that of the Vermont Central Rail-

¹ Beach, *Commentaries on the Law of Receivers*, § 3.

² Beach, *Commentaries on the Law of Receivers*, § 325.

³ Beach, *Commentaries on the Law of Receivers*, § 325.

road, having begun in 1855. But the system of equity procedure which had been worked out in the eighteenth century with respect to receiverships was poorly adapted to an institution so different from anything previously known as a railroad is.

Previous use of the receivership had been mainly in connection with judgments, foreclosures, trusteeships, dissolutions of business partnerships or of banking corporations, or the estates of persons legally incapacitated. Here the function of the receiver was limited chiefly to guarding the property from spoliation, and distributing it among those entitled to it. Or if the property continued in use, the receiver collected the rents and, perhaps, made trifling expenditures for repairs. When railroads came to be put into the hands of receivers, the character of the property handled was widely different, the property itself was scattered and miscellaneous, and even in the case of minor roads, the amount of the property was vastly greater than that ordinarily involved in individual or partnership concerns. The receivership of a railroad also necessitated new relations with a great body of employees. But the greatest difference of all lay in the fact that other receiverships had dealt mostly with the affairs of individuals or private corporations, while among the most important features of a railroad are its semi-public character, and the vital relations which it sustains to all the industrial enterprise in the country. Consequently receivers of railroads have found themselves in positions where such precedents as might seem to bear upon their case, are often more formal than real.

When the law of receivers came to be applied to railroads, therefore, it speedily began to undergo various modifications, some of which were radical in the extreme. The result has been the development of a system of practice in America in regard to the management of railroad property by equity courts quite different from anything known elsewhere. Indeed, "railway receiverships as incidental to the foreclosure of the mortgages upon railway property and franchises are in the main peculiar to the system of jurisprudence administered in the United States. The rules of law in point are for the most part of recent development."¹

The subject of receiverships has received very little attention from legislators in this country. The courts have been allowed to develop the system almost unhindered. Although the federal courts handle most of the railroad receiverships,² there is scarcely any federal statute law on the subject. The Interstate Commerce Act³ mentions receivers among those who are subject to the regulations which it imposes, and the most recent Congresses have seemed to indorse, in a general way, the practices of the courts by making liberal appropriations for "defraying expenses incurred by marshals in executing orders, warrants and processes of United States courts, for the protection of property in the hands of receivers of such courts, and for the arrest and detention until trial of persons arrested for violating such orders

¹ Beach, *Commentaries on the Law of Receivers*. Preface, (published 1887)

² See below, page 144.

³ As amended March 2, 1889, § 10.

and resisting the execution of such warrants and processes.”¹

Aside from these the only federal legislation on the matter of receiverships² is contained in two recent acts of which one³ requires receivers to manage property in their possession “according to the valid laws of the State in which such property shall be situated,” and provides that the receiver may be sued without previous leave of the court, though the suit shall be subject to the court’s general equity jurisdiction; it also forbids a judge to appoint a near relative as receiver; and the other act⁴ disqualifies as receivers, the officers of the court and all civil and military employees of the government.

The statute law of the various States and territories on the subject of receiverships is likewise comparatively meagre.⁵ A great deal of this, moreover, does not apply to railroad receiverships, having reference mainly to foreclosures against individuals, the dissolution of corporations or partnerships, infants’ estates, and the like. The State law is chiefly of a very general character, containing few restrictions, in fact leaving the courts almost as free to follow out their own notions on the subject as if there had been no legislation whatever. The more common specifications are as to what courts may appoint receivers, the matter of the receiver’s bond, the

¹ U. S. Statutes at Large, 53rd Cong., Sess. II, chaps. 301, 307; Sess. III, chap. 187; 54th Cong., Sess. I, chaps. 33, 373.

² Except in regard to receivers of national banks.

³ Act of March 3, 1887, 24 Statutes at Large, chap. 373.

⁴ U. S. Statutes at Large, 54th Cong., Sess. I, chap. 252, § 20.

⁵ This is not strange, as several, especially of the western States and territories, have never had a railroad receivership case in their courts.

method of appeal, the right of the court to remove a receiver at pleasure, the duty of the receiver to list property for taxation, the punishment of the receiver for embezzlement.

In regard to the appointment of receivers the California law is a type of such laws as treat the subject in any detail.¹ After specifying five classes of cases in which receivers may be appointed, the law adds as sixth, cases "where receivers have been appointed by usage of courts of equity."² The Revised Statutes of Arizona³ empower judges of the district courts to "appoint receivers in suits pending, when no other adequate remedy is given by law for protection of property or rights." The statutes of Arkansas permit⁴ the appointment of a receiver "whenever it shall not be forbidden by law, and shall be deemed fair and proper in any case in equity."

¹ This is substantially the law of Colorado (Code of Procedure, 1890, § 163), Idaho (Revised Statutes of 1887, § 4329), Indiana (Revised Statutes, 1896, § 1222), Kansas (General Statutes, 1889, § 4349), Minnesota (General Statutes, 1894, § 5351), Montana (Codes and Statutes, 1895, § 950), Nebraska (Compiled Statutes, 1895, § 5837), Nevada (General Statutes, 1885, § 3168), North Dakota (Revised Codes, 1895, § 5403), Ohio (Revised Statutes, 1894, § 3587), Oklahoma (Statutes, 1893, § 4144), South Dakota (Compiled Laws of Dakota, 1887, § 5015), Texas (Revised Civil Statutes, 1895, Art. 1465), Utah (Compiled Laws, 1888, § 3330), Wyoming (Revised Statutes, 1887, § 2935).

² California Code of Civil Procedure (1885), § 564.

³ Edition of 1887, § 884. This is similar to the law of Georgia (Code of 1882, § 274), Tennessee (Code of 1896, § 5549).

⁴ Digest of 1894, § 5964. The provision is similar, though the wording is slightly different, in Iowa (Code, 1888, § 4113), Kentucky (Codes of Practice, 1895, § 298), Kansas (General Statutes, 1889, § 4306), Missouri (Code of Civil Procedure, 1896, § 567), South Carolina (Code of Civil Procedure, 1893, § 265), Washington (Revised Statutes and Codes, 1896, § 4739), West Virginia (Code, 1891, page 845).

The Michigan law is much more strict in terms,¹ authorizing the appointment of a receiver in cases pending in chancery only "when such appointment is allowed by law;"² but the number of specific cases in which the law allows such appointment is very large.³

The power of the receiver is left equally indefinite. The California law declares that "the receiver has, under the control of the court, power generally to do such acts respecting the property as the court may authorize,"⁴ and the statutes of Arkansas⁵ confer on receivers "all the powers which a receiver in a court of equity can have or possess, unless otherwise provided in this act."

Actual restrictions are very few. The most common is the provision that "no party, attorney or person interested in a suit" shall be appointed receiver therein."⁷

¹ The same is true of New York (Revised Statutes, 1896, pages 2679, 677), North Carolina (Code of Civil Procedure, 1891, §§ 379, 494), Oregon (Codes, 1885, § 1062).

² General Statutes (1882), § 6624.

³ *Id.* §§ 7936, 8064, 8111, 8158, 8386, 8634, 8744, 8749, 8181.

⁴ Code of Civil Procedure (1885), § 563. This is the wording also of the law of Arizona (Revised Statutes, 1887, § 892), Idaho (Revised Statutes of 1887, § 4333), Indiana (Horner's Revised Statutes, 1896, § 1230), Iowa (McLain's Code, 1888, § 4115), Kentucky (Codes of Practice, 1895, § 302), Kansas (General Statutes, 1889, §§ 4352, 1281), Montana (Codes and Statutes, 1895, § 955), North Dakota (Revised Codes, 1895, § 5406), Ohio (Revised Statutes, 1894, § 5590), Oklahoma (Statutes, 1893, § 4147), South Dakota (Compiled Laws of Dakota, 1887, § 5019), Texas (Revised Civil Statutes, 1895, Art. 1470), Utah (Compiled Laws, 1888, § 3334), Washington (Revised Statutes and Codes, 1896, § 4744), and Wyoming (Revised Statutes, 1887, § 2938).

⁵ Digest of 1894, § 5967.

⁶ A California statute of 1897 (§ 1) adds the words, "or related to any judge of the court by consanguinity or affinity within the third degree."

⁷ Revised Statutes of Arizona (1887), § 888; Digest of the Statutes of

But sometimes there is added the clause, "without the written consent of the parties,"¹—which practically nullifies the restriction in the case of friendly receiverships, where the same persons in effect are both plaintiffs and defendants.

Perhaps the most effective restriction is to be found in two recent laws of Alabama² which require a bond before a receiver is appointed, when notice has not been given,³ and in any case exact from the applicant a bond to indemnify persons who may be injured by the appointment of a receiver in case the appointment is vacated.⁴ The Nebraska law forbids an appointment except after notices to all parties affected,⁵ and makes such an appointment

Arkansas (1894), § 5977; Horner's Revised Statutes of Indiana (1896), § 1223; Codes of Practice of Kentucky (1895), § 300; General Statutes of Kansas (1889), § 4350; Compiled Statutes of Nebraska (1895), § 5840; Statutes of Oklahoma (1893), § 4145; Revised Civil Statutes of Texas (1895), Art. 1466; Revised Statutes and Codes of Washington (1896), § 4739.

¹ California Code of Civil Procedure (1885), § 566; Compiled Laws of Dakota (1887) (for South Dakota), § 5017; Revised Statutes of Idaho (1887), § 4331; Codes and Statutes of Montana (1895), § 953; Revised Codes of North Dakota (1895), § 5404; Revised Statutes of Ohio (1894), § 5388; Compiled Laws of Utah (1888), § 3332; Revised Statutes of Wyoming (1887), § 2936.

² Acts of 1894-5, Nos. 123, 337.

³ The California Code of Civil Procedure *permits* the court to require an undertaking, to protect the defendant, when a receiver is appointed on an *ex parte* application (§ 566). Similarly also in Montana (Codes and Statutes, 1895, § 953), North Dakota (Revised Codes, 1895, § 5404), South Dakota (Compiled Laws of Dakota, 1887, § 5017), Utah (Compiled Laws, 1888, § 3332). The Mississippi law *compels* the court to require a bond of the applicant in such cases (Annotated Code, 1892, § 575).

⁴ This last provision is also found in the Nebraska law (Compiled Statutes, 1895, § 5840).

⁵ So also does the Code of West Virginia, 1891, p. 845.

void.¹ A newly enacted law of South Carolina² requires a notice, and forbids the appointment of a receiver before final judgment if the party claiming the property offers a bond to an amount double the value of the property, and when a receiver is improperly appointed, the expenses of the receivership are not to be a charge on the whole property, but only on the interests of the parties procuring the appointment.

Laws on the subject of receiverships which refer particularly to railroads are very scarce indeed, and have nearly all been enacted within the last few years. Aside from such as merely require receivers to make such returns and reports for purposes of taxation and otherwise, as are required of operating companies generally,³ they are as follows: The laws of Georgia direct receivers of railroads "to apply the income to the incidental expenses necessary to the carrying on said business, including damages for which the road is liable as a common carrier."⁴ A receiver operating a railroad is further declared liable for injuries to persons in his employ, the same as a corporation, and a first lien⁵ in favor of such persons is created on the gross income. What is quite unusual in State receiverships,⁶ suits are permitted to be brought

¹ Compiled Statutes (1895), §§ 5838, 5845.

² Acts of 1897, No. 325.

³ Connecticut Acts of 1895, §§ 3585, 3919, 3920.

⁴ Code of 1882, § 278, a.

⁵ In Ohio judgments against the receiver for injuries to persons or property, wages of employees, or material used in operation, constitute a lien on the property in the hands of the receiver (Revised Statutes, 1894, § 3417).

⁶ The Revised Statutes of Ohio (1894, § 3415) also contain this provision; likewise the Revised Civil Statutes of Texas (1895, Art. 1483) and the Acts of the General Assembly of Virginia (1887, Chap. 176).

against the receiver without the suitor's getting leave to sue him from the court by which the receiver was appointed.¹ Indiana holds receivers of railroads liable for stock killed.² A recent law of Massachusetts³ prohibits the obstruction of highways by receivers of railroad corporations.

Besides the common provisions, the Kentucky law⁴ specially provides, in case of an execution of a judgment against a railroad company being returned "no property found," for a receiver to operate the road until he collects, besides paying the operating expenses and keeping the road in repair, a sum sufficient to pay the judgment and costs. The Kansas law directs the court to appoint a receiver on the entry of a judgment, decree or order of foreclosure.⁵ A law of New York, enacted in 1896, permits receivers appointed by courts of other States or of the United States, for the whole of a railroad the greater part of which is in their jurisdiction, to sue and be sued in the courts of New York.⁶ The Vermont law⁷ makes special provision for railroad receivers appointed in other States to be appointed in Vermont also. An act of Oregon in 1893 requires receivers to pay, out of the first receipts, after current operating expenses have been defrayed, all employees' wages accrued

¹ Acts of 1895, No. 224.

² Horner's Revised Statutes, 1896, § 4025.

³ Acts of 1895, Chap. 173.

⁴ Statutes, (1894) § 814.

⁵ General Statutes (1889) § 1281.

⁶ Chap. 356, § 1.

⁷ Statutes (1894) § 3974.

within six months prior to the receivership ; they must also pay all employees every thirty days, and if current receipts are insufficient, must issue certificates bearing eight per cent. interest, and payable out of the first earnings ;¹ an act of Utah in 1896² makes laborers' wages for one year prior to the receivership³ a preferred debt, and a New York statute of 1897⁴ gives wages of employees priority to every other debt or claim.

The laws of Maine⁵ provide for a receiver to be appointed for a railroad when the company neglects to operate it regularly for sixty days,⁶ but subjects the receiver, under such circumstances, to the same restrictions as the charter and the laws imposed on the original incorporators, except that he is specifically authorized, if necessary to repair the road, to create a lien which shall take precedence even of the first mortgage bonds ; and he is required to return the road to the company when they pay off such lien, with interest, and all ar-

¹ General Laws of 1893, page 30.

² Chap. XLIX.

³ In Wisconsin it is three months ; (Laws of 1888, Ch. 48) ; so also in Connecticut (Acts of 1897, Ch. XL) though only to the amount of \$100 ; in Massachusetts (Acts of 1897, Ch. 400) wages not exceeding \$100 for labor within one year or for the recovery of which suit commenced within one year after the performance thereof is pending, or has terminated within one year prior to the receivership, have priority over all other debts except such as are due to any branch of the State or federal government.

⁴ Chap. 415.

⁵ Revised Statutes of 1883, Chap. 51, §§ 47-50.

⁶ The New Jersey law requires the chancellor, upon petition of citizens, to appoint a receiver for a railroad when it fails, for ten days, to run trains regularly on any part of its road ; (General Statutes, 1896, page 2689).

rears of expenses, if a bond is given to operate the road for five years.

The law of South Carolina¹ makes the receiver personally liable for the taxes of the railroad.

The statute of Texas, adopted in 1889, is the most extensive piece of legislation on the subject of receiverships.² Besides the general provisions already noted it prohibits the appointment, as receiver, of any person who is not a citizen of Texas qualified to vote, and declares an appointment in violation of this provision void, and the charter forfeited of any corporation which procures such an appointment. It further declares that the jurisdiction to appoint receivers for property situated in Texas is limited to courts of that State.³ Application for a receivership cannot be made by a corporation for itself. The funds in the hands of receivers are directed to be applied first to paying costs of the suit; 2nd, wages of employees; 3rd, debts for materials and supplies; 4th, debts for betterments and improvements; 5th, claims on contracts and for personal injuries and stock killed; 6th, judgments recovered against the corporation in suits brought before the appointment of the receiver. Property in the hands of the receiver is declared subject to execution, judgments create a first lien on the property, and the property is charged with the lien even after the receivership. Indeed the discharge of the receiver does

¹ Revised Statutes (1893) § 225, 226.

² Revised Civil Statutes of Texas (1895) Art. 1466-1492.

³ The purpose is of course to prevent the federal courts from appointing receivers in Texas, incredible as it may seem that any legislator could suppose that a federal court would ever look to a Texas statute for a definition of its jurisdiction.

not work abatement, but the receiver and the person to whom the property is delivered are both liable and may be sued for an unpaid claim ; the property re-delivered by the receiver without sale is liable for debts, and both judgments and unsued claims have a preference lien over the mortgage, and so has a floating debt created by order of the court to make betterments on the property. No corporation can be administered by the direction of the court for more than three years, and at the end of that time, if the receivership has not been terminated, the affairs of the corporation must be wound up unless this is prevented by appeals.

With the exception of the Texas law, which can hardly be said as yet to have had any direct influence¹ it will be seen that, for the most part, these laws are very general in their character. Only a few of them, and these in a very small number of States, limit the discretion of the court either in the creation or in the management of receiverships. The courts are thus left to depend very largely on such precedents as they may find in English and American judicial decisions, and upon their own devices. And as many of the decisions have not emanated from the court of last resort,² not a few judges have refused to be bound by them. How the laws have been applied in actual cases, will be seen in another chapter.

¹ Naturally the law has not encouraged railroad bondholders to seek receiverships in Texas courts of late.

² Indeed, since the passage of the Act of March 3, 1891, railroad receivership suits can no longer, save in very exceptional cases, be appealed to the Supreme Court of the United States. See below, page

CHAPTER II.

THE HISTORY AND STATISTICS OF RAILROAD RECEIVERSHIPS IN THE UNITED STATES.

While railroad receiverships were not uncommon at an earlier period,¹ their great frequency and importance have been within the last twenty-five years.² During this time more than seven hundred railroad companies, with a mileage exceeding 100,000 miles, have been put into receiverships. It would be a serious error, however, to say that considerably more than one-half the railroad mileage of the country³ has passed

¹ The panic of 1857 was severe in its effects on railroads. In 1859 more than a score of corporations, owning, in the aggregate, over 2,500 miles of railroad, that is, about ten per cent. of the total mileage of the country, were in receiverships.

² Among the more important of the earlier receiverships were the Vermont Central Railroad (120 miles) 1855-84, the Canandaigua & Niagara Falls Railroad (100 miles) 1856-58, the Marietta & Cincinnati Railroad (174 miles) 1858-60, the New York & Erie Railroad (465 miles) 1859-62, the New Albany & Salem Railroad (288 miles) 1859-62, the St. Louis, Alton & Chicago Railroad (220 miles) 1859-62, the Great Western Railroad (175 miles) 1859-62, the Central Ohio Railroad (137 miles) 1859-65, the Cincinnati, Wilmington & Zanesville Railroad (132 miles) 1859-64, the Steubenville & Indiana Railroad (117 miles) 1859-62, the Columbus, Piqua & Indiana Railroad (103 miles) 1859-62, the Pittsburg, Ft. Wayne & Chicago Railroad (468 miles) 1860-61, the La Crosse & Milwaukee Railroad (200 miles) 1860-65, the Atlantic & Great Western Railway (429 miles) 1867-68 and 1869-71. Few others prior to 1870 were of railroads owning so much as a hundred miles of road.

³ The railroad mileage of the United States is now about 184,000 miles.

through receiverships, because so many roads or parts of roads have been in the hands of receivers two or three times.¹ While the combinations and dissolutions of railroad companies have been so numerous as to complicate the problem very greatly, it is probable that not more than one-third of the total mileage has been involved in receiverships. The following table shows² the number of railroads which have gone into receiverships each year for the last twenty-eight years.

¹ See below, page 106.

² The lists published by the *Railway Age* for 1876-79 and 1884-97 differ from these for the following reasons: some omissions from the *Age's* lists have been discovered; a few cases have been included in those lists which were merely new appointments for roads already in the hands of a receiver, and some in which the appointment was annulled without the receiver ever getting possession; on the other hand a system of roads has been counted as one by the *Age* when from two to two dozen different companies were involved, each under a separate receivership. Then in the matter of mileage the *Age* includes both that owned by the company and other mileage operated by it, and even the mileage of subsidiary roads operated separately. While either plan is subject to some objections, it has been decided to include in these tables only the mileage owned by the companies concerned, except in two cases, the Cincinnati, New Orleans & Texas Pacific Railway and the Central Vermont Railroad, which are large operating companies but own no railroad.

YEAR.	Receiver- ships Established.	¹ Miles Owned in Receiverships.	Total Railroad Mileage of U. S.	Percentage put in Receiverships.
1870 . . .	3	531	52,922	1.00
1871 . . .	4	644	60,293	1.07
1872 . . .	4	535	66,171	0.81
1873 . . .	10	1,357	70,268	1.93
1874 . . .	33	4,414	72,325	6.10
1875 . . .	43	7,340	74,096	9.91
1876 . . .	25	4,717	76,808	6.14
1877 . . .	33	3,091	79,088	3.91
1878 . . .	27	2,371	81,767	2.90
1879 . . .	12	1,102	86,584	1.27
1880 . . .	13	940	93,296	1.01
1881 . . .	5	110	103,143	0.11
1882 . . .	13	912	114,712	0.79
1883 . . .	12	2,041	121,455	1.68
1884 . . .	40	8,731	125,379	6.96
1885 . . .	44	7,523	128,361	5.86
1886 . . .	12	1,602	136,379	1.17
1887 . . .	10	1,114	149,257	0.74
1888 . . .	22	3,205	156,169	2.05
1889 . . .	24	3,784	161,353	2.35
1890 . . .	20	2,460	166,706	1.48
1891 . . .	29	2,017	170,795	1.18
1892 . . .	40	4,313	175,204	2.46
1893 . . .	132	27,570	177,753	15.51
1894 . . .	50	4,139	179,279	2.31
1895 . . .	32	3,227	181,082	1.78
1896 . . .	39	3,715	182,600	2.03
1897 . . .	21	1,536	184,464	0.83

One caution must be observed in interpreting these figures. The great falling off in the number of receiverships in the years immediately following those in which the maximum is reached, does not necessarily indicate any improvement in railroad conditions. For instance, the number in 1894 was only fifty as compared with one hundred thirty-two the preceding year. But at the be-

¹ In compiling the table the figures for the mileage of each railroad are taken from the Statistics of Railways, published by the Interstate Commerce Commission, since 1887; before that time, from Poor's Manual of the Railroads of the United States.

ginning of 1894 nearly all the roads for which receivers had been appointed in 1893 were still in the hands of receivers. Consequently the fact that any considerable number at all was added in 1894, 1895 and 1896, showed a continuance of very serious conditions. A somewhat more significant table is the following, showing the number of railroad companies, with the mileage owned by them, actually in the hands of receivers on the first day of January and of July since 1873 and the first of each month beginning with July 1889. This table would indicate the condition of affairs very satisfactorily if the time which a receivership lasts were always uniform. But as there is the widest variety in this respect, even this table is in danger of being slightly misleading. However, as there is no very material variation from year to year in the average duration of receiverships, the error is slight.

TABLE SHOWING NUMBER AND MILEAGE OF RAILROADS
IN THE HANDS OF RECEIVERS ON THE FIRST DAY
OF THE MONTHS NAMED.

	Number.	Mileage in Receiverships.	Per cent. of Total Mileage of U. S.		Number.	Mileage in Receiverships.	Per cent. of Total Mileage of U. S.
1872-Jan.	6	941	1.56	1890-Jan.	50	8,325	5.16
July	7	1,160	1.92	Feb.	49	8,320	5.16
1873-Jan.	9	1,439	2.17	Mar.	48	8,199	5.08
July	9	1,368	2.07	Apr.	51	8,712	5.40
1874-Jan.	17	2,329	3.31	May	50	8,558	5.30
July	26	3,154	4.49	June	49	8,555	5.30
1875-Jan.	45	6,419	8.87	July	48	8,553	5.23
July	63	11,125	15.37	Aug.	48	9,063	5.54
1876-Jan.	75	12,267	16.56	Sept.	49	9,279	5.67
July	80	13,281	17.92	Oct.	50	9,147	5.59
1877-Jan.	85	13,972	18.19	Nov.	51	9,358	5.72
July	83	12,814	16.68	Dec.	52	9,396	5.74
1878-Jan.	94	12,988	16.42	1891-Jan.	54	9,352	5.61
July	94	12,956	16.38	Feb.	57	10,058	6.04
1879-Jan.	95	12,678	15.51	Mar.	60	10,067	6.04
July	86	11,576	14.16	Apr.	63	10,459	6.34
1880-Jan.	73	10,099	11.67	May	63	10,514	6.37
July	61	8,522	9.84	June	60	10,019	6.01
1881-Jan.	54	6,823	7.31	July	55	8,607	5.11
July	40	5,175	5.55	Aug.	53	6,884	4.09
1882-Jan.	29	3,773	3.66	Sept.	55	6,921	4.11
July	29	4,043	3.92	Oct.	56	6,836	4.06
1883-Jan.	27	3,838	3.35	Nov.	55	6,819	4.05
July	20	2,100	1.83	Dec.	58	6,768	4.02
1884-Jan.	23	3,430	2.82	1892-Jan.	60	7,049	4.13
July	40	7,295	6.01	Feb.	62	7,361	4.31
1885-Jan.	54	9,369	7.47	Mar.	69	7,624	4.58
July	79	14,733	11.75	Apr.	71	7,710	4.63
1886-Jan.	76	15,926	12.41	May	69	7,367	4.31
July	70	13,435	10.47	June	70	7,188	4.21
1887-Jan.	68	11,646	8.54	July	77	8,465	4.93
July	58	9,780	7.17	Aug.	75	8,002	4.66
1888-Jan.	51	8,585	5.76	Sept.	77	8,265	4.72
July	54	8,393	5.60	Oct.	76	8,184	4.77
1889-Jan.	52	8,252	5.28	Nov.	79	8,259	4.71
July	52	8,885	5.63	Dec.	78	8,187	4.77
Aug.	51	7,963	5.05	1893-Jan.	77	8,495	4.84
Sept.	50	7,937	5.03	Feb.	79	8,645	4.93
Oct.	50	7,866	4.99	Mar.	81	8,847	5.05
Nov.	54	8,198	5.20	Apr.	85	9,601	5.48
Dec.	57	8,724	5.53	May	85	9,784	5.60

	Number.	Mileage in Receiverships.	Per cent. of Total Mileage of U. S.		Number.	Mileage in Receiverships.	Per cent. of Total Mileage of U. S.
1893-June	90	10,862	6.20	1895-Oct.	177	33,124	18.34
July	93	11,397	6.12	Nov.	176	32,723	18.11
Aug.	99	12,592	6.80	Dec.	176	31,977	17.76
Sept.	105	15,975	9.06	1896-Jan.	171	30,961	17.10
Oct.	112	17,082	9.65	Feb.	171	26,552	14.67
Nov.	172	26,300	14.90	Mar.	173	26,857	14.83
Dec.	184	27,222	15.42	Apr.	172	27,111	14.96
1894-Jan.	191	34,496	19.41	May	171	27,217	15.03
Feb.	200	35,900	20.20	June	165	26,549	14.61
Mar.	204	36,310	20.43	July	166	26,652	14.58
Apr.	210	36,619	20.60	Aug.	161	26,251	14.36
May	212	36,485	20.53	Sept.	153	25,273	13.83
June	209	36,141	20.33	Oct.	156	21,529	11.78
July	210	36,233	20.27	Nov.	153	19,776	10.82
Aug.	209	36,062	20.18	Dec.	154	19,286	10.55
Sept.	207	34,331	19.27	1897-Jan.	146	17,692	9.68
Oct.	207	33,690	18.81	Feb.	150	17,728	9.71
Nov.	206	33,542	18.77	Mar.	152	18,029	9.87
Dec.	180	33,049	18.49	Apr.	147	16,278	8.92
1895-Jan.	182	33,241	18.60	May	148	16,317	8.94
Feb.	184	33,291	18.57	June	148	16,307	8.94
Mar.	186	34,591	19.24	July	140	14,945	8.14
Apr.	188	34,621	19.31	Aug.	140	14,656	7.99
May	191	34,102	19.02	Sept.	139	14,569	7.94
June	191	34,308	19.14	Oct.	137	14,469	7.88
July	182	34,036	18.84	Nov.	136	14,195	7.73
Aug.	182	33,902	18.77	Dec.	136	14,275	7.78
Sept.	180	33,575	18.58	1898-Jan.	132	14,101	7.64

The most frequent reason for receiverships, indeed the ground on which the application for a receiver is usually based, is the failure of the railroad company to pay the interest on its mortgage bonds.¹

¹ Though other creditors than the mortgage bondholders occasionally bring about a receivership. The claims are sometimes of a comparatively petty character; *e. g.*, a receiver was appointed in 1885 for the New York, Pittsburgh & Chicago Railway at the instance of a former employee whom the company owed \$1,000. See *10 Railway Age*, 426, 434.

The explanation of the receivership, therefore, is to be sought mainly in the causes which have led to the interest defaults. So far as the default is not intentional on the part of the managers for the purpose of wrecking the road in their own interest,¹ these causes may be grouped under three heads:² 1st, those which concern directly the income of the railroad; 2nd, those which concern the operating expenses; and 3rd, those which pertain to the fixed charges. In any particular instance any one or all of these causes may have contributed to the result, though in most cases it will probably be found that more than one cause was at work.

In considering the bearing of the income on the financial standing of the railroad, we have to regard both general conditions, that is, those which are felt by all roads, and special influences that affect some more than

¹ *E. g.*, the receivership of the Cincinnati & Eastern Railway in 1883, was alleged to have been secured for the purpose of enabling a syndicate to get the road for less than its value. See 8 *Railway Age*, 596.

² That is, when, as in most cases, the railroad is carried on as an independent enterprise. But the failure of the Philadelphia & Reading Railroad, at least at the time of the first receivership, 1880, was attributed to complications in the coal and iron business in which a large part of the company's capital was invested. See 20 *Chicago Railway Review*, 257. The Adirondack Railroad was included in the receivership of the Adirondack Company in 1875, but was only auxiliary to the mining and manufacturing operations of the company. See *Poor's Manual* for 1875-6, page 128. The embarrassments of the Vaca Valley & Clear Lake Railroad, for which a receiver was appointed in 1878, were caused by the failure of a grain dealer who was the chief owner of the road. See 10 *Railroad Gazette*, 407. The receivership of the Houston, East & West Texas Railway in 1885, was due to the death of the principal stockholder. See 17 *Railroad Gazette*, 462.

others. And one of the most obvious generalizations that can be made in regard to the whole matter is, that years of general business depression have been the ones most prolific of receiverships. Thus the panic of 1837,¹ although coming so soon after the beginning of railroad building, was followed immediately by a long list of receiverships, and in more recent years receiverships have reached the maximum in 1876, 1886 and 1894, and almost disappeared toward the close of 1883, while the year 1887 saw less than three-fourths of one per cent. of the railroad mileage of the country put into receiverships. Commonplace as this may seem, it is of more consequence than at first appears, since it at once overthrows the notion that receiverships have been produced chiefly by unfavorable legislation. This is shown in two ways: first, because railroad failures have come about largely in great business crises in which failures have been general in all lines of activity, not directly affected by the legislation, and secondly, because the different maximum periods have occurred under radically different conditions so far as legislation is concerned.

But general business conditions, though so important, can be only a contributing—often the chief, but never the sole cause of receiverships. For general depression affects all roads, while only a minority succumb. We must look therefore to special causes to explain why certain railroad enterprises fall while others continue to stand.

At the outset it will be seen that some conditions

¹ See also note 1 above, page 66.

which at first sight appear general really have a very much greater effect on some roads than on others. For example, a failure of crops affects the income mainly of those roads which penetrate the staple agricultural districts,¹ affecting others indirectly, by lessening general purchasing power.

A time of panic also affects roads differently according as receipts from passenger service or those from freight service contribute the larger percentage of the income of the road. The year ending June 30, 1894, showed a decrease in freight earnings as compared with the preceding year of 15.63 per cent. for the United States as a whole, the decrease being very marked in every one of the ten territorial groups into which the country is districted by the Interstate Commerce Commission. Passenger earnings, on the other hand, decreased only 5.35 per cent. for the whole country, while in the regions bounded by the Great Lakes and the Ohio and Missouri rivers, as well as in the Louisiana-Texas district the passenger receipts actually increased in this panic year. In the former case the increase was to be explained by the abnormal amount of travel in connection with the World's Fair, but in no district was the decrease in passenger earnings proportional to the decrease in the receipts from freight.² Under these circumstances we

¹As another example, an attorney of the Wheeling & Lake Erie Railroad attributed the receivership of 1897 largely to the depression in the coal trade. As the road depended largely on the coal business, its earnings suffered.

²That the extent to which the World's Fair swelled passenger receipts outside the two districts immediately adjacent to Chicago, is less than might be supposed, is shown by the fact that passenger

should naturally expect the panic to bear most severely, other things being equal, on those roads in whose income the freight receipts formed a larger proportion than the average.¹ Even the passenger earnings themselves are affected by a period of general depression differently according to the relative proportion in which they are composed of earnings from immigrant travel, from first class long distance travel, from general local travel, from excursion and summer or winter resort travel and from suburban business.

In considering the special causes which affect the income of railroads, legislation must not be overlooked. The notion that the Interstate Commerce Act has been productive of railroad bankruptcy relies mainly on the fact that there has been a somewhat undulating increase in receiverships since 1887. It has already been shown that railroads are not exceptional in this respect. But a glance at the tables on pages 68-71 effectually disposes of the superficial notion that the Interstate Commerce Act has been a chief cause of receiverships. Save in the disastrous '93, the mileage of railroads placed in the hands of receivers has never risen, in any year since the passage of the Interstate Commerce Act, to the figures earnings in three of these eight districts actually increased in the year after the World's Fair, while in only one was the decrease as high as 10 per cent., that is, less than two-thirds as great as the decrease in freight earnings for the whole country in 1894.

¹Of the 24 operating companies owning 300 or more miles of railroad each, which were in the hands of receivers 30 June 1894, the proportion of freight earnings to total earnings decidedly exceeded the average proportion for all operating roads, in 19 cases. In 1895 there were 17 similar cases out of a total of 23.

attained in 1875, 1884 and 1885,¹ although the total mileage of the United States had increased nearly 42 per cent. from 1884 to 1893 and more than 138 per cent. since 1875. If the Interstate Commerce Act were the chief cause of receiverships, statistics ought to show that, after the law had been in effect for some time, receiverships became more numerous than before the law was enacted. But as a matter of fact, the number of railroads in the hands of receivers did not, for nearly six years after the passage of the law, become as great as it had been two years before the law was passed, while it was not till September 1893, when the country was in the midst of the most disastrous panic which it has ever experienced, that the mileage of railroads in the hands of receivers rose to as high a point as had been reached in 1886, and even in 1877 when three-fifths of the present railroad mileage was yet unbuilt.²

The particular clauses of the Interstate Commerce Act which have been alleged to be specially burdensome to the railroads are the "long and short haul" clause and the prohibition of pools. In respect to the former, the Commission has always been very ready to make the permitted exception where any reasonable grounds could be found. And in other instances the clause has not been vigorously enough enforced to produce any very drastic results.

¹ 1893 and 1894 are the only years in which the number of receiverships established has been as great as in 1875 and 1885.

² In 1877 more than 18 per cent. of the railroad mileage of the country was in the hands of receivers; at no time, even in 1894, has the percentage exceeded 20 and a small fraction.

In respect to pools it is probably true that, in so far as they are effective in limiting competition, they prevent some loss of revenue to certain roads. This, however, can mean only one of two things. It may mean only that the income is differently distributed, so that some roads receive more and others less than they would without the pool. In this case it remains to be shown why one distribution is preferable to the other. Or it may mean that higher rates are maintained. But rates can be maintained by a pool only when all the competitors can be persuaded to enter the pool and when the pooling agreement can be made effective. Now before the enactment of the Interstate Commerce Act, such pools as existed were only voluntary agreements which there was no effective way to enforce. They were always short-lived, the withdrawal of the dissatisfied members speedily disrupting them, and even while they lasted, according to the very general testimony of the managers of our leading transportation lines, secret violation was almost universal.¹ Indeed it was frequently alleged by the withdrawing member as a reason for the withdrawal that other members were violating the pooling agreement. It may be doubted whether pools were on the whole more effective in preventing rate-cutting than such general agreements to maintain uniform rates as are still in existence. In any event no sweeping conclusions can be drawn. The burden of proof must rest on one who

¹ See particularly their testimony before the Senate Select Committee on Interstate Commerce, pp. 172, 363, 411, 1205, 1235.

would assert that the income of a particular railroad has been seriously injured by the prohibition of pools.¹

While the subject of railroad control by the several States cannot be exhaustively discussed here, it may be noted that there is no such correspondence between thoroughness of State control and frequency of receiverships as to indicate any clear relation of cause and effect. For instance, in Iowa the system of State control, particularly in the limitation of rates, has probably been carried as far as anywhere. The Wabash system, only a small fraction of whose mileage was in Iowa, went into a receivership in 1885. The Minneapolis & St. Louis Railway, less than half of whose mileage is in Iowa, followed in 1888. Aside from these, however, the only receiverships established over Iowa lines from 1876 to 1893 have been over the Central Iowa, which had already gone into a receiver's hands before the beginning of the Granger legislation, and two unfinished narrow-gauge roads, one 45 miles and the other 90 miles long, neither having any important termini or connections. The panic of 1893 added to these the Omaha & St. Louis Railway—part of the Wabash wreckage—the Sioux City & Northern Railroad and the Winona & Southwestern Railway, all together having an Iowa mileage of little more than 150 miles.² The Humeston & Shen-

¹ This point is practically conceded by the universal abandonment of the demand for a mere repeal of this clause of the Interstate Commerce Act, and the substitution, on the part of those formerly taking this ground, of a movement for the passage of an act legalizing pools subject to the Commission's approval, and making the pooling agreements enforceable by law.

² The total railroad mileage of Iowa exceeds 8,500 miles.

andoah Railroad, 95 miles long, with country villages for both termini, followed two years later.

There is, however, one force which has been very effective in reducing the income of railroads, and that is competition.¹ Without any other statistics than a railroad map it is easy to see that with six companies competing² for the business between Chicago and the Twin Cities of Minnesota, seven between Chicago and Kansas City, four between Chicago and Omaha, five between Chicago and St. Louis, three between Chicago and Cincinnati, six between New York and Buffalo, and so forth, the profits on through business, when divided among so many competitors, must be very meagre.

It will not do, however, to assume that the increase of competition has usually driven existing roads into

¹ The important point about competition in this connection is its tendency to divide up the traffic so that no competitor gets enough business to make the enterprise successful. Doubtless competition has also had some effect in reducing rates; but it must be observed that no reliable statistics have been produced to show a greater fall in freight rates (much less in passenger rates) during the last quarter century, than the fall in general prices of commodities; furthermore, the sections of country where the lowest rates prevail are not those where receiverships are most numerous.

² Notwithstanding the partially monopolistic character of railroads, there is still a great amount of competition, even after making all due allowance for pools, agreements on rates, etc. There is practical cutting of rates, in freight through rebates and underbilling, in passenger business (to say nothing of underhand dealings by the railroads with "scalpers") through the payment of commissions, a practice which is ostentatiously "abolished" at frequent intervals. But a more important way in which one road seeks to compete with another, is by striving to offer better accommodations, in the way of unusual speed and comfort, frequency of trains, convenience of terminal facilities, etc., or by extensive advertising of its advantages, both in print and through soliciting agents. All these methods involve vast expense.

bankruptcy. Quite as often the road already established has survived, while the new road, built to compete with the first, has been unable to compete successfully, and has gone into a receivership. The new road has often had to compete at a disadvantage by reason of its longer route or heavier grades or more expensive engineering, or imperfect connections or terminals, or even its lack of well established patronage.¹

Sometimes, however, the new road succeeds in competing for the through business fairly well, but passes through a section which, either because of the sparseness of its population or its previous possession of railroad facilities, offers little of the local traffic which its rival finds so profitable.²

There are instances, however, in which the stress of competition has fallen very heavily upon the old road. The Union Pacific Railway furnishes one of the most striking illustrations. From having a complete monopoly of the railroad business west of the Missouri river, it has been obliged to divide the transcontinental

¹ For example, the New York & New England Railroad depended on a rival (which has since absorbed it) for entrance to New York City. The Erie Railway can get first-class passengers between New York and Chicago only by taking them for two dollars less than the Pennsylvania lines, thus reducing all its revenue from this source more than ten per cent., while at the same time it must be at the expense of carrying these passengers 83 miles farther than its rival.

² The Erie again excellently illustrates this point. For many interesting facts about the peculiar position of the Erie see Van Oss, *American Railroads as Investments*, pp. 211 ff. The Lake Erie & Western Railway (from Sandusky to Peoria) is another road which was included in the list of receiverships for 1885, because most of its traffic was through business at competitive points, carried at low rates.

traffic with six competitors, it has a formidable rival at Ogden and another at Cheyenne, while four other lines from the East penetrate Colorado. The great development of its local business hardly compensates the Union Pacific for the loss of these advantages. The Northern Pacific Railroad had a somewhat similar experience. At its completion it opened up a country destitute of other connection with the East. But the completion of the Great Northern Railway with its easier grades, the Canadian Pacific Railway with a government treasury behind it, and the extension of the Union Pacific system to Oregon proved too much for it, and it passed into a receivership¹ in the panic of 1893.

A form of competition from which much has been feared for the railroads, is that of electric trolley lines, especially in the suburbs of great cities. While this competition may come to be very formidable, it has not yet led to any receiverships. It is a fact whose significance is not limited to this particular point that the New York & New England Railroad is the only railroad going into a receivership since 1890 in whose income receipts

¹The same thing has happened to minor roads in very many instances. The Philadelphia & Atlantic City Railway, throughout its length, was built parallel and close to the Camden & Atlantic, and spent most of its independent existence in a receivership (1878-83). The Brooklyn, Bath & Coney Island Railroad was very profitable till the multiplication of roads to Coney Island divided the business and forced it into foreclosure proceedings in 1884. In the case of the Prescott & Arizona Central Railway, the travel became almost nothing after the building of the Santa Fé, Prescott & Phoenix Railway, which is fourteen miles shorter, and soon after the beginning of the receivership in 1893, operations were suspended along the whole seventy-three miles of its length.

from suburban business formed any important element.¹ Few of them have had any suburban business at all. Of the 210 roads in receivers' hands July 1, 1894, and the hundred more which have since succumbed, only eight had termini in any of the nine cities with a population exceeding 275,000, and few even of these had any extensive suburban business.

Another form of competition which limits the earnings of railroads is that of water-routes, especially along the Great Lakes and the Atlantic coast. It is difficult to refer particular cases of bankruptcy to this cause, however. Indeed the trunk lines which have been most directly affected by this competition are among the most prosperous railroads in the country.

A great deal of complaint has been made by railroad managers of the competition of Canadian roads not subject to the Interstate Commerce Act. As in the case of water competition, however, the lines affected, especially east of St. Paul, have generally been strong enough to hold out in spite of this difficulty. But the Northern Pacific failure, as already intimated, was doubtless due in some measure to this competition. The hardship has come, however, not so much from the operation of the law as from the fact that government subsidies, granted for political reasons, give the Canadian Pacific Railway peculiar advantages.

It remains to notice the case of roads which have been unwisely pushed into regions too far in advance of

The Chicago & Northern Pacific Railroad developed considerable suburban business under the receivership.

settlement, so that, although free from competition, they have been driven into receiverships from lack of sufficient business to enable the road to keep its receipts up to its expenses. This explanation applies to many short roads in various parts of the country. Naturally but few long lines could be placed in this class, since the failure is apt to come before the line has extended far. To some extent, however, this may account for the condition of the Atlantic & Pacific Railroad,¹ the Fort Worth & Denver City Railway, the former Denver & Rio Grande Western Railway, and perhaps others.

It is now possible to give another explanation for the increase in receiverships since 1887. That year marked not only the passage of the Interstate Commerce Act, but also the climax in the era of railroad building. In the seven years preceding 1887 the railroad mileage of the United States had increased more than 57 per cent. The railroad building of 1887 alone exceeded nine per cent. of even this now greatly increased mileage.² But railroad building did not stop with 1887; the total mileage of the country has increased nearly 24 per cent. more in the decade which has since elapsed. If so-called over-production is to be held responsible for financial reverses in any line of enterprise, there are certainly few fields where it has been more active than in railroad construction.

¹ The earnings per mile of this road for the year 1893-94 were more than thirty per cent. below the average earnings of the "group," and the showing for the earlier months, which preceded the appointment of the receiver, was worse.

² Barely as many miles of railroad were built in the whole twenty-three years, 1830-1852, as were built in the single year, 1887.

In some instances it has happened that the earnings of the main part of a system have been sufficient to enable the road to meet its expenses, but the weight of numerous unprofitable branches and extensions has been too much for it. The Wabash, St. Louis & Pacific Railway was one of the most striking illustrations. This road with a mileage of 3,566, spread over a region extending from Lake Erie to the Missouri river, and from St. Louis to northwestern Iowa, went into a receivership in 1884. The receiver used the pruning knife freely, and the reorganized Wabash Railroad passed safely through the severe depression of 1893-94 with 1,979 miles of main track. The Indianapolis, Cincinnati & Lafayette Railroad was solvent when a receiver was appointed in 1870, but was incumbered with a debt of \$700,000 for the construction of branch roads which were dead weights. The collapse of the Ohio & Mississippi Railroad in 1876 was declared by the receiver to be due to the construction of the Louisville branch, together with the expense of changing the gauge of the road.¹ Somewhat akin to this are such cases as that of the Louisville, New Albany & Chicago Railway (1896) which was brought to a condition of bankruptcy chiefly through having guaranteed to the amount of \$1,185,000 the bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad which was never completed and became insolvent.

Misfortunes beyond human control have occasionally

¹ But dissatisfied stockholders held the receivership to be part of a corrupt scheme to absorb the property in the interests of the Baltimore & Ohio Railroad.

been the means of curtailing the income of a road so seriously as to bring on a receivership. The embarrassment of the Atlantic & Gulf Railroad, which culminated in the receivership of 1877, was attributed by its president to the violent epidemic of yellow fever in Savannah in the summer of 1876, paralyzing industries and reducing commerce.¹ Terrible storms in July 1875, put a stop to all business on the Marietta, Pittsburgh & Cleveland Railroad, and the importunity of creditors immediately led to a receivership.² The receivership of the Texas & Pacific Railway³ in 1885 was occasioned mainly by a large decrease in earnings in consequence of the heavy floods in Louisiana which closed the New Orleans division for several months, together with the failure of the cotton crop in Texas.⁴ The Cairo & St. Louis Railroad was subjected to heavy losses in 1877 by the failure of a tunnel and by the repeated destruction of the road near Cairo by the Mississippi river, although the receivership was also due partly to the failure of suits to compel the issue of municipal bonds voted in aid of the enterprise.⁵ Creditors of the Chicago & Pacific Railroad, who secured the appointment of a receiver in 1876, alleged that the road had earned its expenses and interest, but that these monies had been diverted to extend the line.⁶

¹9 *Railroad Gazette* 21.

²7 *Railroad Gazette*, 349.

³ But see also below, page 92.

⁴ Poor's Manual for 1886, page 815.

⁵9 *Railroad Gazette*, 556.

⁶12 *Chicago Railway Review*, 155.

On the side of expenditures it is quite possible that some roads have passed into receiverships in consequence of excessive costs for operating expenses. But it is very difficult to determine what reasonable costs of operation are, without a minute investigation of all the peculiar circumstances and conditions of each individual road. General statistics do not disclose any striking contrasts in this particular between roads which have passed under receiverships and those which have not. Of late the effort to reduce expenses of operation to a minimum has been very general, though it is quite possible that lack of sufficient care in this direction may have been a more common cause of receiverships in an earlier period than in recent years.

Occasionally, however, there have been extraordinary expenditures necessitated, or liabilities unintentionally incurred, which have bankrupted a railroad company. In consequence of an accident on the New York & Sea Beach Railway on Labor Day, 1895, claims for damages were pressed upon the company to an amount far exceeding their entire capital stock and bonded debt. To anticipate action unfavorable to their claims the bondholders proceeded to foreclose their mortgages upon the railroad, and a receiver was appointed in January 1896.¹ It was to forestall judgments because of claims to the amount of half a million dollars on account of the defalcation of the secretary and treasurer several years before, that a receiver was appointed in 1893 for the

¹ 28 *Railroad Gazette*, 50.

Cincinnati, New Orleans & Texas Pacific Railway Company.¹

But when we come to the matter of fixed charges the case is more obvious. Many railroads which have gone into receiverships have been operated by other companies. Their expenses consist entirely of fixed charges, and the causes of their failure are apt to be complicated with those of the operating company. But of the operating companies which were in the hands of receivers, June 30, 1894, there were few whose fixed charges did not form a much higher percentage of their total expenditures than the average of the geographical groups to which they belong.² When it is observed that this average runs from 25 to 44 per cent. in the different groups and exceeds 33 per cent. for the country as a whole, it can be seen that the roads which exceed the average must be very heavily hampered unless their operating expenses are exceptionally small.

The weight of the fixed charges is a matter of great importance because of the fact that these charges are most oppressive when the business of the road is in the worst condition. When the traffic is light, a large share of the ordinary operating expenses can be correspondingly curtailed. But the payment of the fixed charges must be kept up in all contingencies. The chief portion

¹ 25 *Railroad Gazette*, 236. "The immediate cause of the receivership was the decision of the Superior Court of Cincinnati in the so-called 'Doughty over-issue cases,' whereby the company was held liable for the issue by a former secretary of a large amount of fraudulent stock." Hollander, *The Cincinnati Southern Railway*, p. 53.

² The exact figures for each road may be seen in the statistical report of the Interstate Commerce Commission.

of the fixed charges of American railroads consists of interest on the bonded debt. The bonded debt, bearing a fixed rate of interest, regardless of the income of the road, is the chief financial reliance of the American railroad. In England the bonds are not a lien on the franchises and physical property of the road as in America, but only on the income. When income falls short, the bondholder must suffer with the stockholder, and there is no such thing as a foreclosure of the road. Income bonds have never been general in the United States,¹ however, and do not seem to be on the increase. The outlook for their sale would not seem to be encouraging, since of those in existence in 1895 more than 91 per cent. paid nothing to their owners, and of the few which did pay at all, nearly three-fourths paid less than four per cent.² Of the 210 railroads which were in the hands of receivers June 30, 1894, only sixteen roads, belonging to eleven systems, had any income bonds at all, and the total amount of these bonds was less than \$107,000,000 out of an aggregate bonded indebtedness on the part of these specially fortunate roads, of about \$703,000,000. On the whole then, the elasticity afforded by income bonds was hardly appreciable, and to nearly all the roads a slight curtailing of income meant a breaking down under the weight of the fixed charges. The Interstate Commerce Commission notes³ that, of the roads in

¹ Of the funded debt of American railroads in 1895, only four and a half per cent. consisted of income bonds,—more than in 1894, but less than in the three years before.

² In this respect income bonds made a worse showing than stock. Only seventy per cent. of the stock failed to pay dividends.

³ Report, 1894, p. 69.

the hands of receivers on the above date, only eighteen had paid any dividends to their stockholders since 1880, their entire net earnings in prosperous times being scarcely adequate to pay the interest on their indebtedness and other fixed charges.

Whether American railroads are generally too heavily capitalized or not, this is undoubtedly the condition of very many small roads which have helped to swell the lists of receiverships.¹ But out of eighteen railroads owning or operating more than 300 miles each which are at present² in receiverships, only ten are capitalized as high as the average of the geographical groups in which they are situated. And in all but two of the ten a large part of the excess is represented by stocks and bonds of other companies owned, or by the equipment necessary to operate great systems of leased lines.

The list of receiverships has been very much extended, though the additional mileage involved is, of necessity, comparatively small, by the great number of roads whose construction has been undertaken with insufficient capital to complete the work. In other instances the work has been delayed from various causes, so that obligations have matured before the road has

¹ E.g., the Clarinda & St. Louis Railroad, twenty-two miles, was built for \$8,000 per mile and—to say nothing of the stock—bonded for \$12,000 per mile. Nor did the difference represent an increase in value. The receiver appointed in 1884 expected to have to sell the whole property for \$40,000. As a matter of fact, he could not sell it at all, and it was abandoned and the track taken up. See 21 *Railroad Gazette*, 812. This, by the way, was one of those roads built not to meet any public need, but in the futile hope of getting the business away from a competitor whose track was close alongside.

² March 1, 1898.

reached a condition such as to enable it to earn a revenue at all or on only a very small portion of its length.¹ The Cleveland, Delphos & St. Louis Railroad, a narrow gauge road 46 miles long, though not insolvent, was placed in the hands of a receiver in 1884 on application of the stockholders, in order to complete arrangements for an extension.² Several conflicting liens on the Tennessee Central Railroad made financiers unwilling to advance money to complete it; so a receiver was appointed in 1895 in order that receiver's certificates might be issued for that purpose.³ In the case of the Hutchinson & Southern Railroad the difficulties in the way of completion do not seem to have been financial, but rather troubles about the right of way, and interference by a county court; the receiver appointed by the United States court in 1893 was sought by the directors in hope of securing for the management of the road immunity from local judicial control.⁴ The embarrassment of the Cincinnati & Eastern Railway, 1879, was ascribed to

From among a large number the following may be mentioned as a few illustrations of this class: The St. Paul & Pacific (St. Vincent extension), 1873; the Plymouth, Kankakee & Pacific Railroad, 1874; the New York, West Shore & Chicago Railroad, 1875; the Chicago, Clinton & Western Railroad, 1876; the Manhattan & Northwestern, 1877; the Pennsylvania Petroleum, 1877; the Chicago, Millington & Western Railroad, the Covington, Flemingsburg & Pound Gap Railroad, and the Springfield, Effingham & Southeastern, 1878; the Galveston, Brazos & Colorado Railroad, 1880; the New York & Atlantic Railroad, 1883; the Newcastle & Northern, 1884; the Blue Springs, Orange City & Atlantic Railroad, 1886; the Palisades Railroad, 1894; the Atlantic Short Line Railroad, and the Gulf & Interstate, 1895.

¹ 16 *Railroad Gazette*, 492.

² 27 *Railroad Gazette*, 732.

⁴ 25 *Railroad Gazette*, 630.

the failure of the subscribers to pay up their subscriptions.¹ A receiver was appointed in 1885 for the Pennsylvania, Slatington & New England Railroad by a court of chancery which had directed its sale on the suit of a contractor who had obtained a judgment for \$3,500. The road had not yet got into operation.²

As a rule it has been generally understood that the appointment of a receiver was not an independent matter for the purpose of which a direct suit in equity could be brought, but that a receiver could be appointed only when an actual suit was entered and one of the parties to the suit could show that it would seriously imperil his interests to leave the property in the hands of the possessor pending the litigation. And the injury must be of a sort that would work injustice. But in 1884 quite an extraordinary decision was made in the United States Circuit Court for the Seventh Circuit. After executing three mortgages, the Wabash, St. Louis & Pacific Railway Company became insolvent and unable to pay either the interest on its bonds or the principal of a large floating debt which it owed. The corporation itself asked for the appointment of general receivers and a sale of its property for the benefit of all concerned, alleging its insolvency and declaring that if the "lines of road were broken up and the fragments thereof placed in the hands of various receivers, and the rolling stock, materials and supplies seized and scattered abroad, the result would be irreparable injury and damage to

¹ 11 *Railroad Gazette*, 64.

² 10 *Railway Age*, 396, 434; 17 *Railroad Gazette*, 704.

all persons having any interest in said lines of road.”¹ On this petition the receivers were appointed. That is to say, it was put into the hands of receivers in order to prevent the holders of the separate mortgages from gaining the possession to which they were entitled by foreclosure.

In the autumn of 1885 the Texas & Pacific Railway Company “became satisfied that it could not longer continue to pay interest on its bonded debt without first expending a large sum of money in renewal of tracks, raising roadway, widening cuts and embankments, putting in new cross-ties, purchasing rolling stock and motive power, and the renewal of bridges and other like improvements. To ascertain what should be done the directors appointed a committee, who, with experts, were directed to examine into the condition of the road and report”² what was necessary to put the road in good condition, and the amount of money required. “The result of that report was the determination to cease to pay interest, and to place the road in the hands of a receiver.”³ Consequently the road was operated for nearly three years by two receivers, one of whom was the vice-president of the company, the railroad being relieved for that time from the payment of its fixed charges.

The St. Louis, Cape Girardeau & Ft. Smith Railway Company in 1893 was in debt, in embarrassed circum-

¹ Wabash, St. Louis & Pacific Railway Company *v.* The Central Trust Company, 23 Federal Reporter, 272.

² Texas & Pacific Railway Company *v.* Johnson, 76 Texas, 421.

³ Texas & Pacific Railway Company *v.* Johnson, 76 Texas, 421.

stances, and some of its creditors were about to sue on its overdue obligations. A State court granted the petition of the railroad company and appointed a receiver, March 4, 1894. This plan was not so successful as those previously cited, however. In setting aside the action the Supreme Court of Missouri, June 4, 1894, characterized it as "simply a petition by a debtor for a receiver to manage and carry on its business, so that its creditors cannot enforce their legal rights in the courts of the country."¹

These three instances will perhaps sufficiently illustrate the baldest sort of "friendly" receiverships.

While the class of causes already enumerated accounts for a very large majority of the receiverships, there are some instances where the reasons for the application had no immediate connection with the financial condition of the road. Receivers were appointed in 1893 for the Cleveland, Canton & Southern Railroad on the application of the company, which professed to be solvent, but feared litigation and consequent dissipation of funds.² In the case of the Gilman, Clinton & Springfield Railroad some of the directors and others organized the Morgan Improvement Company to build the road. The cost was \$1,500,000. The price paid was \$2,000,000 in first mortgage bonds, \$1,400,000 in stock certificates, and all of the bonds (\$598,000) subscribed by counties and towns along the way. The president and two of the directors, who owned three-fourths of the

¹The State *ex rel.* Merriam, petitioner *v.* Ross, Judge, *et al.*, 122 Missouri Rep., 435.

²25 *Railroad Gazette*, 711.

stock of the Barclay Company, made a contract with themselves by which the railroad was bound to buy its coal of them at a specified price, and to carry the coal of the company at a specified rate. The Illinois Circuit Court decided that these transactions constituted a breach of trust,¹ and appointed a receiver in 1873. The Missouri Circuit Court appointed a receiver for the Hannibal & St. Joseph Railroad in 1877 on the application of a stockholder who charged mismanagement by the company.²

Receivers have occasionally been appointed to manage the property of a leased road, pending litigation in a suit to set aside the lease. This was true in 1883 of the Atlantic & North Carolina Railroad³ which had been leased to the Midland, and in 1877 of the Eastern Railroad⁴ of New Hampshire, leased to the Eastern of Massachusetts. The United States Circuit Court ordered the receiver of the Denver & Rio Grande Railway, appointed by the Colorado Circuit Court in 1879, to restore the road to the Atchinson, Topeka & Santa Fé company, as the road was not insolvent and the receivership was a subterfuge to keep the road from the lessee.⁵ The receivership of the Mammoth Cave Railroad in 1895 is said to have been part of a plan of the Louisville & Nashville company to secure a reduction

¹ 1 *Railway Monitor*, 388.

² The case was not sustained, however, and the Supreme Court restored the road to the company. 10 *Railroad Gazette*, 73.

³ 15 *Railroad Gazette*, 187, 189.

⁴ 9 *Railroad Gazette*, 44.

⁵ 11 *Railroad Gazette*, 392.

of rates on its leased line.¹ A receiver was appointed for the Indiana, Bloomington & Western Railway in 1886 on the application of a judgment creditor on account of a dispute as to the terms of the lease of the Cincinnati, Sandusky & Cleveland Railroad.²

Internal dissensions have been numerous among the owners of railroads, and have necessitated, many times, the appointment of receivers when there was no insolvency. Receivers were appointed in 1893 for the Altona, Clearfield & Northern Railroad,³ pending investigation of the claims of two factions to control the road; in 1877 for the Atlantic & North Carolina Railroad⁴ pending a decision as to the lawfulness of a new board of directors; for the Lafayette, Muncie & Bloomington Railroad⁵ in 1877 in consequence of an attempt on the part of the bondholders, resisted by the company, to take possession of the western division; for the Kansas & Gulf Short Line Railroad⁶ in 1885 because of a dispute between the stockholders over alleged fraudulent issue; for the Little Rock & Ft. Smith Railroad⁷ in 1873 pending a contest for the possession of the road between different boards of directors; for the Michigan Lake Shore Railroad⁸ in 1873 because of a contest for control between different factions representing the interests re-

¹ 27 *Railroad Gazette*, 440.

² 18 *Railroad Gazette*, 484.

³ 25 *Railroad Gazette*, 897.

⁴ 9 *Railroad Gazette*, 127.

⁵ 10 *Railroad Gazette*, 73.

⁶ 17 *Railroad Gazette*, 814.

⁷ 1 *Railway Monitor*, 389.

⁸ 5 *Railroad Gazette*, 387.

spectively of the Pennsylvania, the Grand Rapids & Indiana and the Lake Shore & Michigan Southern; for the Sedalia, Warsaw & Southwestern Railway¹ in 1893 on the application of the minority stockholders who wished to take the road out of the hands of the Missouri Pacific, and make it part of a new line. After taking the Denver & Rio Grande Railway from one receiver, as noted above, the United States Circuit Court appointed another receiver² to manage the road till the court decided who owned it. The bondholders of the New York, Chicago & St. Louis Railway (the "Nickel Plate,") averred³ that the receivership of 1885 was secured to protect the floating debt and keep the road under the control of the Lake Shore & Michigan Southern Railway; a somewhat similar theory about the Ohio & Mississippi Railroad has already been noted.⁴

A few receiverships seem to have been sought as a means of enforcing a judicial penalty against a railroad company. A receiver was appointed for the Jacksonville Southeastern Railway in 1889 on the ground that the company had refused to pay a judgment obtained for injuries;⁵ for the Northeastern Railroad of Georgia in 1883 on a judgment for \$7,500, although the company was not in default.⁶

In other instances the object of the receivership has been to prevent the operation of the road from being

¹ 25 *Railroad Gazette*, 844.

² 11 *Railroad Gazette*, 456.

³ 17 *Railroad Gazette*, 240.

⁴ Note I, page 84.

⁵ 21 *Railroad Gazette*, 437.

⁶ 15 *Railroad Gazette*, 682.

interrupted by the judgment creditors. In 1885 a receiver was appointed for the Port Jervis & Monticello Railroad on the application of the company, when the rolling stock had been seized to satisfy a judgment of \$7,500 for a former employee for injuries.¹

In at least one instance, that of the Kentucky Central Railway in 1889, a receiver was appointed in a suit of the State for taxes.² For a few weeks in 1874 the New Jersey Southern³ and Long Branch & Seashore⁴ Railroads were put into the care of receivers in accordance with a statute of New Jersey which directs such action to be taken whenever a railroad company neglects to run daily trains for ten successive days. In 1892, without the authority of any specific statute, an Indiana court appointed a receiver for the Chicago & South-eastern Railway on the complaint of shippers that the road was unable to do business.⁵ What promised to be a very interesting opportunity for study in a receivership distinctly undertaken as a matter of public policy, was quickly cut short, however; for, on the filing of a bond to satisfy judgments and taxes, the road was returned to the company only eight days after the receiver was appointed.⁶

A futile attempt, perhaps in the interest of stock-jobbing, was made in 1896 to place the lines of the

¹ 10 *Railway Age*, 10.

² 21 *Railroad Gazette*, 739.

³ 11 C. E. Green, 539.

⁴ 9 C. E. Green, 398.

⁵ 32 *Chicago Railway Review*, 479.

⁶ 32 *Chicago Railway Review*, 493.

Atchison, Topeka & Santa Fé Railway in Kansas in a receivership on the basis of a State law which declared forfeited to the State all real estate owned by corporations more than twenty per cent. of whose stock was owned by aliens. Without settling the disputed questions whether the law was actually adopted by the legislature, or whether it was constitutional even if adopted, it was decided by the court not to apply to railroad companies.

The general theory of the receiver has been that of a disinterested party into whose hands a property was put that he might conserve the interests of all concerned. A man who had not been connected in any official way with the enterprise, would therefore seem to be the only person suitable to be appointed receiver. In the case of railroads, however, no such rule has been universally observed. Indeed it may be said to be exceedingly common to appoint not only men who are representatives of special interests, but the principal officers of the company. Out of 150 cases spread over the last thirty years and specially investigated with reference to this point, were eighty in which the president of the road in question was appointed receiver; twenty-five others were general managers, seventeen superintendents, and sixteen vice-presidents. Other officers represented were the auditor, the treasurer, the chief engineer, and individual directors, as well as several who combined other offices with some of those mentioned above. In a few cases the mortgage trustees¹

¹ Among the more notable examples was the Vermont Central Railroad, whose mortgage trustees were receivers from 1856 to 1873.

as a body have been constituted receiver of a railroad.¹ In 1855 the Vermont & Canada Railroad Company was the receiver of the Vermont Central Railroad, and from 1873 to 1884 the latter was operated by the Central Vermont Railroad Company as receiver.

It is a matter of no great wonder that this very common practice of appointing as receiver a representative of a special interest, should lead to great complaints on the part of other interests, and numerous efforts to have the receiver displaced. In fact the chief objections to receiverships have usually been connected with this phase of the subject. The principal excuse for the practice has been the alleged difficulty of securing other persons sufficiently familiar with railroad management to be competent to act in such a capacity. And indeed if the alternative must be the treating of the appointment as a piece of patronage to be bestowed upon some favorite of the court,² the appointing of an officer of the road is certainly to be preferred, both in the interest of the property concerned and for the protection of the

¹ A great number of railroads, on default of the interest on the mortgage bonds, have passed into the possession of the trustees in accordance with the terms of the mortgage; many others have been bid in by the trustees at the foreclosure sale, and have been operated for a considerable time by the trustees, pending reorganization, without the appointment of any receiver. These furnish interesting material for a study in railroad economics, but are obviously outside the scope of the present paper.

² It is hardly to be doubted that this practice has been not altogether infrequent. But the evidence in any specific case is apt to be of such a character that, however strong the probability, a clear demonstration is not always possible. Consequently no statistical estimate, much less any sweeping assertion, is here offered.

judiciary. Nor does the plan of appointing officers of other roads seem to be much preferable. Unless the roads are in the same region, it is not apt to be practicable; if they are competitors, it is obviously undesirable; and if the relation is different, the tendency is natural for the receiver¹ to make the road tributary and its interests secondary to those of his own road.

In commercial enterprises generally a receivership is instituted only for the purpose of winding up the affairs of the concern,—disposing of the property, settling the debts, and distributing the assets, if any remain, among the stockholders, or for the purpose of conserving the property pending the settlement of a judicial controversy. In the latter case the duration of the receivership is wholly indefinite,—it may be for a few days or for several years. In the former case, which, in railroad receiverships, usually involves a foreclosure of mortgage, certain prescribed legal forms are essential which require several months for their performance. Where matters are pushed forward as rapidly as possible, however, it is rarely necessary for the receivership to last much more than a year. But since most of the property of a railroad company is of little value to any persons except those who wish and are able to operate a railroad in precisely that locality, it not infrequently happens that, when the appointed time for the foreclosure sale arrives, no bids are received, and another date must be set for the sale, preceded by a considerable period required for

¹ For illustration see dissatisfied stockholders' complaint of the Ohio & Mississippi Railroad receivership in 1877, when it was in the hands of an officer of the Baltimore & Ohio Railroad. 14 *Chicago Railway Review*, 29.

the legal publication of the notice. More frequently no bid is received which is up to the minimum price fixed by the court, and the result is the same. Still more frequently dissensions among the various interests concerned delay the fixing of a date for the sale, or a postponement is secured, sometimes several successive postponements, on the application of one of the parties involved.

Even after the sale has been made, there are many possible excuses for prolonging the receivership. The terms of sale frequently provide for payment of the purchase price in several installments, and the receiver is likely to continue in charge until the payments are completed and the sale confirmed by the court. It is not altogether rare for the purchaser to default¹ on one of the later payments, and then the whole process of foreclosure and sale must be repeated.² Default has even been made on repeated sales, thus prolonging the process almost indefinitely.

In no small number of cases there are several orders of securities involved, each requiring a separate sale. Thus it may be necessary to foreclose a second mortgage and sell the property; the purchasers have then, perhaps, to bid it in again on the foreclosure of the first mortgage, and even a third time on a sale to satisfy receivers' certificates.³ So many technicalities are deemed

¹ E.g., the Washington & Ohio Railroad in 1882 and 1883.

² The sales of the Texas Trunk Railroad are almost innumerable.

³ For example, after having been sold in 1875 on foreclosure of the mortgage, the Alabama & Chattanooga Railroad was sold in 1876 to satisfy the receiver's certificates, and again in 1877, the purchaser in 1876 having defaulted. 9 *Railroad Gazette*, 54; 10 *Id.*, 56.

requisite, that it is often easy to discover an irregularity that invalidates the sale¹ and necessitates a repetition of the legal process and a great extension of the period of the receivership. Where the receivership has been established for the purpose of conserving the property during litigation, all the delays incident to litigation have, of course, likewise protracted the receivership. From these and other causes receiverships in very large numbers have extended over periods of from five to ten years. Some have gone far beyond even this limit. The most extreme case on record in this country is that of the Vermont Central Railroad which was held by receivers for twenty-nine years.² Of railroads now in the hands of receivers one has been in that condition for nearly eighteen years, and another for more than twelve years. These roads are petty affairs, however, (four miles and eight miles, respectively,) and neither is operated by the receiver, one being leased to the Danville & Western Railway, and the other, through

¹ Among many illustrations, one of the most striking is that of the Cleveland, Mount Vernon & Delaware Railroad which, about three months after the foreclosure sale, was delivered by the receiver to the purchasers, who had organized as the Cleveland, Akron & Columbus Railroad Company, and who operated the road from December 1, 1881, to April 23, 1882, when the sale was annulled by the court and the road returned to the receiver, who retained possession nearly four years longer. 1883 *Poor*, 567; 18 *Railroad Gazette*, 31. The Lebanon Springs Railroad, after being in a receiver's hands more than five years, was turned over to the New York, Rutland & Montreal Railroad Company in 1886, but in 1888 relapsed into a receivership, where it still remains.

² From 1855 to 1884. After being out of the courts for twelve years, this road, now the Central Vermont Railroad, entered upon another period of receivership in March 1896. 21 *Railway Age*, 174.

a special agreement with the receiver, is operated by the New York & Greenwood Lake Railway, a part of the Erie system, which owns its stocks and bonds.¹ A majority of the railroads now in receiverships, however, have been placed there during the last three years.²

The table on the following page shows the approximate duration of receiverships established during the last twenty-eight years. It will be noticed that, excepting those established in 1872, 1873, 1875, and 1891, the majority lasted less than three years, in many cases less than two years, and all created in 1881 less than one year. It is a sufficiently accurate approximation to say that the average duration³ has been between two and three years.

Certain judges have shown a decided disposition to bring receivership proceedings to a close as rapidly as possible. The table does not, however, disclose any marked growth of such a tendency.

While receiverships are sometimes unduly prolonged for various reasons, it is the usual expectation that a receivership will end as soon as the specific purpose for which it was established has been accomplished. As the great majority of railroad receiverships are formed as preliminary to the foreclosure of a mortgage, the usual course of procedure is very similar in most in-

¹ Interstate Commerce Commission, Eighth Annual Report on Statistics of Railways, pages 177, 211.

² This is true of *all* whose mileage exceeds 400 miles, except the Union Pacific and Wisconsin Central systems, and the Toledo, St. Louis & Kansas City Railroad, whose receiverships began in 1893.

³ The most recent years have, of course, to be excluded from the calculation since so many of the receiverships begun in these years have not yet been closed.

DURATION OF RECEIVERSHIPS.

YEAR.	No. established.	Lasting under one year.	One year and under two.	Two years and under three.	Three years and under four.	Four years and under five.	Five years and under six.	Six years and under seven.	Seven years and under eight.	Eight years and under nine.	Eleven years and under twelve.	Still in existence Jan. 1898.
1870	3	.	2	.	1	.	.	.	.	.	.	.
1871	4	1	1	.	.	1	.	.	1	.	.	.
1872	4	.	.	1	.	2	.	1	.	.	.	.
1873	10	1	3	.	2	1	.	2	1	.	.	.
1874	33	6	7	5	4	2	5	3	1	.	.	.
1875	43	4	8	8	7	6	4	2	1	2	1	.
1876	25	9	3	4	3	3	1	1	1	.	.	.
1877	33	5	6	10	3	4	2	2	1	.	.	.
1878	27	4	11	5	5	1	1	.	.	.	.	.
1879	12	5	3	2	1	1	.	.	.	.	.	.
1880	13	5	3	2	.	.	2	.	.	.	.	1
1881	5	5	.	.	.	.	.	.	.	.	.	.
1882	13	5	2	1	2	1	2	.	.	.	.	.
1883	12	6	2	2	1	.	1	.	.	.	.	.
1884	40	6	13	7	4	5	2	.	3	.	.	.
1885	44	6	11	10	6	3	3	1	1	2	.	1
1886	12	1	7	3	1	.	.	.	.	.	.	.
1887	10	4	2	2	1	.	1	.	.	.	.	.
1888	22	3	7	3	5	1	1	1	.	.	.	1
1889	24	8	7	5	1	2	.	.	1	.	.	.
1890	20	3	3	6	3	3	.	1	.	.	.	1
1891	29	4	5	3	4	4	4	.	.	.	.	5
1892	40	7	4	10	6	3	.	.	.	.	.	10
1893	132	12	37	26	25	.	.	.	.	.	.	32
1894	50	9	9	11	.	.	.	.	.	.	.	21
1895	32	6	11	.	.	.	.	.	.	.	.	15
1896	39	11	.	.	.	.	.	.	.	.	.	28
1897	21	4	.	.	.	.	.	.	.	.	.	17
Total												132

stances. When the foreclosure sale takes place, the property is sometimes purchased by another company. But more commonly it is bid in by an organization formed especially for the purpose of acquiring the property.¹ This company is usually formed chiefly if

¹ This is often done even when the purchase is made in behalf of another company.

not wholly, by the bondholders themselves.¹ When the conditions of the sale have been met and the property passed over by the receiver, the new² company carries on the business simply under a different name. Sometimes this name is wholly unlike the old one, but more often the change is so slight as not to attract public attention³ or necessitate the expense of repainting all the rolling stock with new initials.⁴ Practically the receivership may be said to end when the receiver delivers the property to the purchasers,⁵ but the legal discharge of the receiver is often deferred for months until the court has approved all his reports and accounts.

In some cases, however, the purpose of the receivership is accomplished without the necessity of a foreclosure sale. When this happens, the receivership ends

¹ Sometimes, however, railroads are acquired in this way by wholly different interests.

² Sometimes the reorganization is completed before the foreclosure sale, and the new company takes the property directly from the receiver; sometimes the receiver retains control after the sale until the reorganization is perfected, which may be some months, or even years; sometimes the receiver delivers the property to trustees for the purchasers, who hold it pending the completion of the reorganization.

³ The favorite device is merely to substitute "railway" for "railroad" (or vice versa), in the official title of the company: as the Philadelphia & Reading Railroad, reorganized in 1896 as the Philadelphia & Reading Railway; the St. Louis & San Francisco Railway, reorganized in 1896 as the St. Louis & San Francisco Railroad.

⁴ For example, the Indianapolis, Bloomington & Western Railway was reorganized in 1879 as the Indiana, Bloomington & Western Railway; the Battle Creek & Bay City Railway was reorganized in 1889 as the Bay City & Battle Creek Railway.

⁵ Throughout this paper, a receivership is considered as ending when the receiver surrenders possession of the property, or definitely and finally abandons its operation.

simply by the receiver, on the order of the court, restoring the property to the company. In a few cases it is impossible to find a purchaser, and the road is abandoned. In the case of receiverships terminated during the last twenty-five years, more than 87 per cent. of the railroads involved were sold under foreclosure and reorganized, nearly eleven per cent. were restored to the old companies without foreclosure, and less than two per cent. were abandoned.¹

The termination of the receivership has not always proved final, however. It is a noticeable fact, though perhaps not strange, that many railroads which have gone into receiverships in recent years have previously passed through receiverships.

During the past twenty-five years no less than ninety-seven railroads have gone into a receivership for the second time.² Nor are these all roads of little consequence, but include such important systems as the St. Louis & San Francisco Railway, 1875-6³ and 1893-6, the Western New York & Pennsylvania Railroad, 1885-7⁴ and 1893-5, the Chesapeake & Ohio, 1875-8 and 1887-8, the East Tennessee, Virginia & Georgia, 1885-6 and 1892-4, the International & Great Northern, 1878-9 and 1889-92, the Missouri, Kansas & Texas

¹ The percentage of mileage abandoned is less than one-seventh of one per cent. of the total mileage put into receiverships.

² There have besides been great numbers of roads which, after having been in receiverships, were consolidated with other roads, which later went into receiverships. But the figures given above include only cases in which the identity of the railroad has been preserved during the period intervening between the two receiverships.

³ Then known as the Atlantic & Pacific Railroad.

⁴ Then called the Buffalo, New York & Philadelphia Railroad.

Railway, 1874-6 and 1888-91, the Toledo, St. Louis & Kansas City Railroad, 1883-6¹ and 1893-, and the Central Vermont Railroad, 1855-84² and 1896-. Twenty-six roads have been three times in the hands of receivers, and a remarkable proportion of these are great systems like the Philadelphia & Reading, which passed through receiverships 1880-3, 1884-8 and 1893-6, the Erie Railway, 1859-61,³ 1875-8 and 1893-5,⁴ the New York & New England Railroad, 1870-1,⁵ 1884-5 and 1893-5, and the Louisville, New Albany & Chicago, 1857-9,⁶ 1871-3 and 1896-7. The railroad which now passes under the unique designation of the "Nypano," with a mileage exceeding four hundred miles, has enjoyed four receiverships,⁷ in 1867-8,⁸ 1869-71⁹ 1874-80¹⁰ and 1895-6;¹¹ to say nothing of a receiver who was appointed in 1885, but never succeeded in getting possession of the railroad. One unfortunate railroad¹⁰ a hundred miles long, in Indiana, has on six occasions been under receivers for brief periods.¹¹

¹ Under the title of the Toledo, Cincinnati & St. Louis Railroad.

² Then known as the Vermont Central Railroad.

³ Under the title of the New York & Erie Railroad.

⁴ Then the New York, Lake Erie & Western Railway.

⁵ Then called the Boston, Hartford & Erie Railroad.

⁶ Then known as the New Albany & Salem Railroad.

⁷ So also have the Texas Western Narrow Gauge Railroad, in 1878-81, 1884-5, 1886-90 and 1891-5, and the Columbus, Sandusky & Hocking Railway in 1885-9 (as the Columbus & Eastern Railroad), in 1895, and twice in 1897.

⁸ At these times its name was the Atlantic & Great Western.

⁹ Then known as the New York, Pennsylvania & Ohio Railroad.

¹⁰ Known at various epochs of its career as the Anderson, Lebanon & St. Louis Railroad, the Midland Railway, and the Chicago & South-eastern Railway.

¹¹ In 1877-85, 1887, twice in 1892, 1893 and 1896-7.

CHAPTER III.

EFFECTS OF RAILROAD RECEIVERSHIPS.

As already stated, the purpose of the receivership is to conserve the property pending the dissolution of the corporation or the settlement of litigation. In ordinary cases the power of the receiver is very limited. To conserve the property has commonly been held to mean only to guard it from seizure and from such direct physical injury as would immediately destroy its value. But railroad property is of such a character that the courts have found it impossible to give a strict construction to the term "conserve," or to limit the powers of the receiver. The larger part of the physical property of a railroad consists of its right of way, road-bed, bridges, yards, station-houses, depots, elevators, stock-yards, round-houses, repair shops, tanks, coal-sheds, fences, gates, etc., pretty much all of which is practically worthless apart from the system. It is essential, therefore, in order to preserve any assets at all, to keep intact such property as cannot be advantageously detached from the rest and sold separately. That is to say, the integrity of the system *as a railroad* must be preserved.

The ravages of the elements cause deterioration as much as mere use of railroad property. A railroad that should be simply abandoned for a number of months would require an enormous expense to prepare it for operation again. It seems therefore to involve a needless hard-

ship to the owners of the property to require that it lie idle, when a steady revenue could be gained from its operation without very greatly increasing the expense that would be necessary merely to preserve the property from destruction. But even more than this, a large element in the value of a railroad consists of the patronage it has secured both in the way of miscellaneous traffic and of definite contracts with private shippers and with the post-office department and express companies. All this is likely to be forfeited and the value of the property depreciated if operations are suspended. In many instances, also, the retention of the franchise depends on the continuous operation of the road.

For these and perhaps other reasons the courts have commonly authorized receivers of railroads either to operate the roads themselves or, less frequently, to provide for their operation by leasing them to an operating company.¹ If the railroad has been an independent one, the receiver is commonly authorized to operate it; if it has been previously leased by another company, the receiver is likely to be authorized to arrange with the

¹ For instance, of 192 roads in the hands of receivers, June 30, 1894, 137 were operated independently by the receivers, five were leased by the receivers to operating companies, five were not in operation at all, and the remainder were operated by the receivers of systems of which they formed a part. Of 169 roads in the hands of receivers, June 30, 1895, 136 were operated by independent receivers, eight were leased by the receivers to operating companies, four were not in operation, and twenty-one were parts of systems in receiverships. Of 151 roads in the hands of receivers, June 30, 1896, 128 were operated by their receivers, three were leased to operating companies, fourteen were operated by the receivers of the systems to which they belonged, and six were not in operation.

lessees for its continuous operation. The rule is not inflexible, however, sometimes an independent road is leased by the receiver to another company, and sometimes a leased road is taken away from the lessee by the receiver and operated independently.¹ So while in general a receiver can do with property only what is necessary to protect it from actual destruction, a railroad receiver can do whatever may be made to appear to the court essential to the safe and continuous operation of the railroad. Thus when a receiver is appointed for a railroad, one of the first things he is usually authorized to do is to institute necessary repairs. Bridges are rebuilt,² rotten ties³ are replaced, flood damages are repaired,⁴ above all, new rails are substituted for those which are worn out. In the days when iron rails were still generally used, the new rails were often of iron, perhaps even more often the old iron rails were replaced

¹ For example, the Wisconsin Central Railroad, leased April 1, 1890, to the Northern Pacific Railroad for 99 years, was taken from the lessees by the receiver, September 26, 1893, and with its subsidiary lines, has since been operated as an independent system.

² The receiver of the Chicago & Atlantic Railway, in the year 1889-90, took out 111 condemned bridges, 22 *Railroad Gazette*, 550; the receiver of the Cincinnati & Eastern Railway, in 1885-6, renewed or repaired every bridge on the road, 18 *Railroad Gazette*, 322; etc., etc.

³ The receiver of the Indianapolis, Bloomington & Western Railway from 1874 to 1878 replaced nearly half a million ties, 11 *Railroad Gazette*, 206; the receiver of the Houston & Texas Central Railway laid more than 300,000 ties in 1885, 19 *Railroad Gazette*, 272.

⁴ This extended even to the building of miles of new line, as in the case of the Cairo & St. Louis Railroad in 1878, to replace roadbed washed away by the Mississippi river, 10 *Railroad Gazette*, 87. The receivers of the Savannah & Atlantic Railroad (18 miles) in 1894 rebuilt the whole road, most of which was washed away in 1893, 26 *Railroad Gazette*, 131, 396, 766.

with more serviceable steel.¹ Now old steel rails are often replaced with new ones of heavier make.

The replacing of rails is not confined to those actually worn out, but the receiver often relays whole sections, sometimes the entire road with new steel.² Often the repairs must involve great expense, for when a receivership has not come on quite suddenly, the continued financial stringency has very likely prevented repairs being made for a long time, and it is not uncommon for a receiver, on taking possession of a railroad, to find it in such a dilapidated condition that its operation is extremely perilous,³ and he must not only keep up current repairs, but institute repairs which ought to have been made months before,—indeed many elements of the property which might earlier have been repaired economically, are altogether beyond repair, and must be entirely rebuilt.⁴

¹ The Houston & Texas Central receiver laid 135 miles of steel rails in 1885; the receiver of the Mobile & Ohio Railroad relaid three-fifths of the 527 miles with steel, 1875-83, 8 *Railway Age*, 80; the receiver of the Texas & Pacific Railway laid over 500 miles of steel in 1887, 19 *Railroad Gazette*, 138, 659; etc., etc.

² E.g., the whole of the Portland & Ogdensburg Railroad was relaid with steel by the receiver in 1884, 16 *Railroad Gazette*, 744; the whole of the Chicago & Iowa Railroad in 1879, 11 *Railroad Gazette*, 408; etc., etc.

³ For instance, business had been almost entirely suspended on the Lafayette, Muncie & Bloomington Railroad when the receiver took possession in 1877; the eastern division was unfinished, the western division so depreciated as to be hardly safe to run trains, 10 *Railroad Gazette*, 398. See 10 *Railroad Gazette*, 417, for an amusing account of the condition of the Philadelphia & Atlantic Railway when the receiver took charge, quoted from the *Philadelphia Times*.

⁴ The Marietta & Cincinnati Railroad, for example, was rebuilt from one end to the other (276 miles) by the receiver, 1878-80, 20 *Chicago Railway Review*, 610.

But in almost innumerable instances the work has not stopped with keeping up the property to the previous standard, but thousands and even millions¹ of dollars have been expended by the receivers in extensive improvements. Not only have iron rails been replaced with steel, as already noted, wooden bridges supplanted with iron, and miles of track ballasted, but great quantities of rolling stock² have been added to the equipment, and entirely new improvements have been introduced at considerable expense. Roadbeds have been raised and levelled,³ curves straightened,⁴ stone embankments built to protect the track.⁵ Differences of gauge have hampered the interchange of traffic with connecting lines; the receiver of the broad gauge Atlantic & Great Western Railroad, 1877, constructed steam hoists⁶ to facilitate the exchange of broad and standard trucks on cars as they came and went over other roads; the receiver of the Erie Railway (5 ft. gauge) laid a third

¹ \$1,300,000 was thus expended by the Cairo, Vincennes & Chicago Line (266 miles) in 1885, 10 *Railway Age*, 540; \$1,500,000 in the case of the Florida Railway & Navigation Co., 1885-9, 21 *Railroad Gazette*, 135; \$4,500,000 for betterment and new equipment by the receiver of the Missouri, Kansas & Texas Railway, 1888-91, 31 *Railway Review*, 375; \$3,400,000 in the case of the Baltimore & Ohio Railroad in 1896, to buy rolling stock, besides \$5,000,000 to pay preferred claims and to improve the roadbed, 21 *Railway Age*, 290.

² The receivers of the Baltimore & Ohio Railroad, for example, were authorized to buy at one time 5,000 freight cars and 75 locomotives, in 1896, 21 *Railway Age*, 290.

³ E.g., the Texas & Pacific Railway, 300 miles in 1887, 19 *Railroad Gazette*, 138.

⁴ E.g., the Baltimore & Ohio Railroad in 1896, 21 *Railway Age*, 290.

⁵ E.g., the Denver & Rio Grande Western Railway in 1885, 10 *Railway Age*, 250.

⁶ 10 *Railroad Gazette*, 118.

rail over a considerable portion of the road in 1876-7 to enable standard cars of other lines to pass over his tracks.¹ Others have not been content with these devices, but have reduced² broad gauge or widened³ narrow gauge tracks to standard, changes which have necessitated also the providing of new trucks⁴ for all the rolling stock and the rebuilding of all the locomotives.

Receivers have, further, purchased terminal facilities;⁵ they have completed branch lines⁶ and extensions⁷ previously begun, and have even bought subsidiary roads.⁸

¹ 8 *Railroad Gazette*, 234; 9 *Id.*, 502.

² E.g., the East Tennessee, Virginia & Georgia Railroad changed from five foot to standard, 113 miles, Selma to Meridian, by the receiver in 1886, 18 *Railroad Gazette*, 305.

³ E.g., the Galveston, Sabine & St. Louis Railway (38 miles) in 1886, Poor's Manual for 1887, p. 741; 30 miles of the Ohio & Northwestern Railroad in 1888, 13 *Railway Age*, 838; the East & West Railroad of Alabama (117 miles) in 1889, 21 *Railroad Gazette*, 349; the East Line & Red River Railroad (124 miles) in 1892, 32 *Railway Review*, 187, changed from three feet to standard gauge by their respective receivers.

⁴ Indeed, the change from three feet to standard gauge usually requires the substitution of new rolling stock throughout; generally the taking up of both rails and replacing them with heavier steel, sometimes discarding all the ties for longer ones, and even rebuilding the bridges and widening the roadbed.

⁵ The Cairo & St. Louis Railroad at East St. Louis in 1879, 11 *Railroad Gazette*, 432; the Chicago, Peoria & St. Louis Railway at Springfield, Ill., in 1895, 27 *Railroad Gazette*, 418; etc., etc.

⁶ E.g., the Harrison branch of the Flint & Pere Marquette Railway in 1879 11 *Railroad Gazette*, 530; etc.

⁷ As the Ohio & Northwestern Railroad in 1888, 13 *Railway Age*, 652; the Florida Railway & Navigation Company in 1886, 18 *Railroad Gazette*, 118; etc.

⁸ As the Kansas City and Pacific Railway (130 miles) bought by the Missouri, Kansas & Texas receiver in 1889, 21 *Railroad Gazette*, 469.

Receivers have met the expense of these repairs and improvements, 1st, by devoting to such purposes net earnings¹ which, but for the receivership, would have gone to pay fixed charges; 2nd, by curtailing the expenses and thus increasing the amount of net earnings available;² 3rd, by far the commonest method, by incurring indebtedness, usually in the form of receivers' certificates. Leases of other railroad properties have sometimes formed part of the assets of defaulting companies. These leases the receiver is instructed in many cases to surrender; but not always. If a lease is profitable the receiver is often empowered to continue the operation of the leased line. But a few receivers have leased and operated lines not previously connected with the system.

The receivership, when wisely managed,³ has thus

In 1897 a federal court authorized the receiver of the Louisville, Evansville & St. Louis Consolidated Railroad to acquire the New Albany Belt & Terminal Railroad, 37 *Railway Review*, 142.

¹ The extraordinary expenditures mentioned in connection with the Marietta & Cincinnati Railroad (note 4, page 111), were made out of the net earnings of the road, 20 *Railway Review*, 610; the receiver of the Chicago & Atlantic Railway, in the year 1889-90, paid \$615,000 of ante-receivership indebtedness, \$222,658 interest in the Chicago & Western Indiana Railroad, ballasted seventy-six miles of track and made the other improvements noted (note 2, page 110,) out of the earnings of the road, 22 *Railroad Gazette*, 550.

² Thus in 1873-4 the receiver of the Gilman, Clinton & Springfield Railroad, after three months' possession, cut running expenses down about forty per cent., and was thus able, after paying back wages and taxes, to make improvements out of the net earnings, 6 *Railroad Gazette*, 116.

³ During two years (1871-3) of Mr. Ingalls's receivership of the Indianapolis, Cincinnati & Lafayette Railroad, the whole floating debt (\$2,000,000) was paid, current expenses met, and improvements

proved the salvation of many pieces of railroad property.¹ The public has been benefited by the substitution of well equipped and administered traffic lines for inferior ones, and while the stockholders and creditors have had nominally to relinquish some of their claims, the actual value of their holdings has not in all cases necessarily relatively diminished. On the other hand, no doubt money has been unwisely expended, as it has in all sorts of enterprises, so that the value of some railroads is less than the cost of their improvements. This condition of things, however, is peculiar neither to railroads in distinction from other property, nor to railroads managed by receivers as distinguished from other railroads. The reasonable ground of complaint here is that so often these improvements are made virtually at the expense of those who have no voice in the matter.²

It would at first seem to be quite a remarkable method of conserving the property to order part of it to be destroyed. Yet this has sometimes been done. Besides cases already noticed³ where the railroad was abandoned altogether, there have been numerous instances in which receivers have been ordered to destroy portions of the

made; forty per cent. more cars and thirty per cent. more engines were in good running order, 1 *Railway Monitor*, 56. The debt of the Rio Grande Railroad was entirely cleared off in the nine years of the receivership, 1875-84, 16 *Railroad Gazette*, 38.

¹ See an interesting article in 21 *Railway Age*, 99, on "The Evolution of a Bankrupt Road."

² Where receivers' certificates, made a first lien on property, are issued to an amount in excess of the increase in the value of the property which the proceeds of the certificates occasion, the value of the other securities is, of course, correspondingly decreased.

³ Pages 89, 106.

line while continuing to operate others.¹ Few acts of receivers are less open to criticism than these, however, as such acts seem to have been confined to pieces of property for which, obviously, there was no public necessity, and which could never be operated except at a heavy loss.

Perhaps the farthest departure from the earlier idea of the receivership is seen in the building of new railroads by receivers. Although no very great portion of the railroad mileage of the country has been built by receivers,² the practice is not uncommon. Even as early as 1858-9 the receivers of the Columbus, Piqua & Indiana Railroad built thirty miles or more of railroad.³ Recently for a long time not a year has passed without the building of some few miles of railroad by receivers, though in no year has such construction reached three per cent. of the total construction for the year, and has

¹ The receiver of the New Orleans & Southern Railroad, for example, was ordered in 1896 to tear up the 20 miles of track from Belaire to Bohemia, La., although the remainder (45 miles) was still to be kept intact, 23 *Railway Age*, 19. The receiver of the Wichita & Western Railway, on his own petition, was authorized in 1896 to take up the rails for 40 miles from Pratt to Mullinville, Kansas, and to improve the other 80 miles from Wichita to Pratt. The abandoned portion was parallel to another railroad, and had not been operated for a year, while the last ten years of its operation involved the loss of over a million dollars, 22 *Railway Age*, 214, 500.

² The receiver of the St. Paul & Pacific Railroad, St. Vincent Extension, constructed 104 miles in 1873-4, 6 *Railroad Gazette*, 100; the receiver of the Missouri, Kansas & Texas Railway built 73 miles, 1888-91, 31 *Railway Review*, 375; but very few receivers who have done any railroad building at all have constructed more than ten or fifteen miles.

³ 16 *American Railroad Journal*, 555.

usually been much less than one per cent. Some comparatively unimportant roads have been almost wholly built by the receivers,¹ and as noted above,² it has come to be a recognized expedient for a company having difficulty in providing for the building of a road to secure the appointment of a receiver for the purpose of facilitating the construction.³ And nearly all railroads which have been built, either in whole or in part, by receivers are roads which were in process of construction at the time of the receiver's appointment.⁴

The tendency to railroad consolidation in recent years has attracted much attention. The foreclosures which so frequently accompany a receivership of course offer many opportunities for great systems to acquire feeders or competing lines. Some systems have been quite largely built up in this way, and very many more have added something to their mileage as the result of receiverships. On the whole, however, receiverships have resulted in the road being absorbed in a great system in much fewer instances than might be supposed.⁵ Doubtless in many

¹ The Blue Springs, Orange City & Atlantic Railroad in 1887, Poor's Manual for 1887, p. 662; the Memphis, Selma & Brunswick Railroad in 1885, 17 *Railroad Gazette*, 335.

² Page 90.

³ Funds for building a road may sometimes be raised by receivers' certificates where they could not be secured on ordinary mortgage bonds, since no method has yet been discovered for adding later liens which will take precedence of the receivers' certificates.

⁴ A notable exception is the Mobile & Ohio Railroad, which was extended 21 miles from Columbus to East Cairo, Ky., a more desirable terminus, in 1881 during the receivership. 13 *Railroad Gazette*, 545.

⁵ In a very large number of cases railroads have emerged from receiverships and at a later date have been absorbed into large systems where these subsequent absorptions cannot be fairly considered as the result of the receivership.

cases properties which have gotten into the hands of receivers have been bought up in the interests of persons¹ who also had great interests in other railroads. But the cases where a road, after being sold by a receiver,² has been bought by a great system or leased to it, or in any other way has become connected with it in a definite corporate capacity, are not sufficiently numerous to make such a fate appear by any means the general rule.

The former Wabash, St. Louis & Pacific Railway began³ with the reorganization of the Toledo, Wabash & Western Railway which came out of a receivership with 628 miles of line in 1877; as the result of other receiverships the Peoria, Pekin & Jacksonville Railroad (83 miles), and the Havana and Decatur branches (132 miles) of the Indianapolis, Bloomington & Western Railway were added to it in 1879, the Toledo, Peoria & Warsaw Railway (247 miles), the Chicago & Paducah Railroad

¹ The former so-called "Gould System" of railroads, for example. This was a system only in the sense that Jay Gould owned a controlling interest in the different railroads which composed it.

² The very numerous instances where railroads have been sold under foreclosure without ever getting into a receivership, are not considered in this paper at all.

³ Several other railroad systems of some importance have developed from the nucleus of a single railroad reorganized after a receivership: notably the Chicago, St. Paul, Minneapolis & Omaha Railway, operating 1,492 miles, is a reorganization of the West Wisconsin Railway (178 miles), after the receivership of 1877-8. The Pacific Railroad of Missouri (284 miles), after the receivership of 1875-6 developed into the Missouri Pacific Railway, now controlling 5,640 miles. The Atlantic, Mississippi & Ohio Railroad (428 miles), was reorganized after the receivership of 1876-81 as the Norfolk & Western Railroad, which operated 1,577 miles in 1894. The Boston, Hartford & Erie Railroad (113 miles), was reorganized after the receivership of 1870-1 as the New York & New England Railroad, which operated 545 miles in 1894.

(165 miles), and the Springfield & Northwestern Railroad (45 miles), were added in 1880, and the Cairo & Vincennes Railroad (157 miles) in 1881. This case is an unusual one, however. It is surpassed only by the Southern Railway, a reorganization in 1894 of the Richmond & Danville Railroad (145 miles), which had been in the hands of receivers for two and a half years; the Southern Railway then obtained control, as soon as they emerged from the receiverships, of the Columbia & Greenville Railroad (199 miles), the East Tennessee, Virginia & Georgia Railway (1247 miles), the Louisville Southern Railroad (123 miles), the Charlotte, Columbia & Augusta Railroad (191 miles), in 1894, the Asheville & Spartanburg Railroad (66 miles) and the Atlanta & Florida Railway (103 miles) in 1895, the Georgia Pacific Railway (555 miles) in 1896, the Northern Division Cumberland & Ohio Railroad (27 miles) in 1897, the Hartwell Railroad (10 miles) and the Memphis & Charleston Railroad (292 miles) in 1898.¹

Only a few other existing systems have acquired more than two or three additions² as a direct result of

¹ Both the Wabash and the Southern systems, however, embraced considerable additional mileage which had not previously been in receiverships.

² Among the more important single additions to railroad systems as the direct result of receiverships are the Rockford, Rock Island & St. Louis Railroad (279 miles), acquired by the "Burlington" system in 1877, the West Shore Railroad (472 miles), added to the New York Central system in 1886, the New York, Chicago & St. Louis Railway (the "Nickel Plate," 503 miles), added to the Lake Shore system in 1889, the Cairo, Vincennes & Chicago Line (265 miles), added to the "Big Four" system in 1889, the Chicago & Atlantic Railway (250 miles), added to the Erie system in 1890, the Richmond & Allegheny Railroad (249 miles), added to the Chesapeake & Ohio Railway in

receiverships. The Louisville & Nashville Railroad, obtained a part (46 miles) of the Louisville, Paducah & Southwestern Railroad in 1877, the Selma & Gulf Railroad (40 miles) and the New Orleans, Mobile & Chattanooga Railroad (141 miles) in 1880, the Paducah, Tennessee & Alabama Railroad (119 miles) and the Tennessee Midland Railroad (135 miles) in 1895, and the Middlesborough Belt Railroad (22 miles) in 1896. The Southern Pacific Company, gained control of the Oregon & California Railroad (475 miles) in 1887, the Oregonian Railway (155 miles) in 1890, the Portland & Willamette Valley Railway (29 miles) in 1892, and the San Gabriel Valley Rapid Transit Railway (18 miles) in 1893. The Union Pacific system gained the Kansas Pacific Railway (677 miles) and the St. Joseph & Denver City Railroad (227 miles) in 1879, the Denver Pacific Railway (106 miles) in 1880, and the Hastings & Grand Island Railroad (27 miles) in 1885. The Illinois Central Railroad secured the Gilman, Clinton & Springfield Railroad (111 miles) in 1877, the Havana, Rantoul & Eastern Railroad (76 miles) and the Champaign, Havana & 1888 the Cincinnati, Washington & Baltimore Railroad (281 miles), added to the Baltimore & Ohio system in 1889, the St. Louis, Ft. Scott & Wichita Railroad (310 miles), added to the Missouri Pacific system in 1887, the New York & New England Railroad (361 miles), added to the New York, New Haven & Hartford Railroad in 1895, the Shenandoah Valley Railroad (253 miles), added in 1890 to the Norfolk & Western Railroad, which also gained the Scioto Valley Railway (132 miles) the same year, and the Chicago & Lake Huron Railroad (232 miles), added in 1881 to the Grand Trunk system, which has now also practically absorbed the Central Vermont Railroad (403 miles), though the receivership of the latter has not yet closed.

Western Railroad (130 miles) in 1887, the Chesapeake, Ohio & Southwestern Railroad (351 miles) in 1896, and the Owensboro, Falls of Rough & Green River Railroad (42 miles) and the Short Route Railway Transfer (1½ miles) in 1897.

When, however, a large system has gone into a receivership, the result has sometimes been just the reverse,—that is, the system has been disintegrated, and some of the parts have continued an independent existence, while others have been absorbed by other systems. The most striking illustration of this tendency is furnished by the Wabash, St. Louis & Pacific Railway, to which allusion has just been made. The Atchison, Topeka & Santa Fé system was partially dismembered through the receivership of 1895-6 by the segregation of the St. Louis & San Francisco Railway, operating 1,328 miles, and the Colorado Midland Railroad, operating 350 miles. The Union Pacific system was radically reduced through the receivership by the separate reorganization of the Oregon Railway & Navigation Company (1,059 miles), and the Oregon Short Line & Utah Northern (1,480 miles). It now seems probable, however, that these roads, as well as the "Gulf" lines (1,523 miles) and most of the numerous branches will soon be restored to the system. The Richmond & Danville system, comprising 2,733 miles, went to pieces as a result of the receivership of 1892-4, but the parts were quickly gathered up with others into the Southern Railway,¹ a still larger system.

¹ See page 119.

The receivership of the Toledo, Cincinnati & St. Louis Railroad, 1883-6, resulted in sloughing off parts of the system, reducing the mileage from 782 to 450, which was reorganized as the Toledo, St. Louis & Kansas City Railroad. The mileage operated by the Chicago, Peoria & St. Louis Railway was reduced from 412 to 222 miles by the receivership of 1893-6.¹

The breaking up of systems has not always been the rule, however,² as witness the receivership of the Texas & Pacific Railway in 1885 and the numerous receiverships of the Denver & Rio Grande, the Missouri, Kansas & Texas, and the Erie and Reading systems.³

A topic which has received about as much, if not as discriminating attention as any in connection with receiverships, is the matter of rate-cutting. It has been rather common to attribute a large share of the troubles which have vexed the railroad world in the way of rate-cutting to those roads which were being operated by receivers. There is no doubt that abundant evidence is to be had which seems to point in this direction. Many receivers have refused to enter into combinations⁴ with

¹ 21 *Railway Age*, 99.

² The loss to the Northern Pacific system, through the receivership of 1895-6, of the Wisconsin Central lines (986 miles), has already been mentioned,—see note 1, page 110.

³ Though its receivership is not yet terminated, the Central Vermont system has already surrendered the Rutland Railroad (135 miles) and the Ogdenburg & Lake Champlain Railroad (127 miles), 28 *Railroad Gazette*, 349; 23 *Railway Age*, 236.

⁴ During the spring of 1896 the Norfolk & Western Railroad, then in the hands of a receiver, was the only trunk line which refused to enter the Joint Traffic Association. In the same year the Toledo, St. Louis & Kansas City Railroad refused to join this association, and the

competing lines to maintain rates. Doubtless receivers have both openly and secretly countenanced cutting of rates.¹ On the other hand instances are no less numerous of receivers joining with the managers of other lines to prevent rate-cutting, sometimes forming agreements to maintain rates, and sometimes even joining in the organization of pools.² Attempts to keep up rates have

receiver obtained an injunction to prevent members of the association from boycotting the road on account of this refusal. But the receiver of the Baltimore & Ohio Railroad joined the association.

¹ Not to burden the paper with any attempt at enumeration it may suffice to mention a few illustrations, taken at random over a period of twenty years. In 1876 the Erie Railway, then in a receiver's hands, stimulated its passenger traffic enormously by making a \$5 rate from New York to Buffalo, and \$9 for the round trip. Under the receivership of 1883 the Toledo, Cincinnati & St. Louis Railroad made a rate from Toledo to St. Louis \$3.40 less than the rate by other lines; in 1885 the same road was so generally believed to be cutting freight rates that it had to secure a temporary injunction forbidding the Michigan Central Railroad from refusing freight believed to have been taken at cut rates. In 1887 the Western Passenger Association found that the Wabash, St. Louis & Pacific Railway was cutting Chicago-St. Louis rates of passenger fare \$2.50 through scalpers, and asked Receiver McNulta to have it stopped, 19 *Railroad Gazette*, 462. In 1895 the receivers of the Atchison, Topeka & Santa Fé Railroad were taken to task by the Interstate Commerce Commission for making through rates from Chicago to Colorado points lower than to intermediate points, 28 *Railroad Gazette*, 55.

² For instance, the receiver of the Denver & Rio Grande Railroad in 1884 agreed with the Denver & New Orleans Railroad to maintain rates between Denver and Pueblo, 16 *Railroad Gazette*, 611. As early as 1877 the receivers of the Illinois & St. Louis Bridge were authorized by the court to pool with the Wiggins Ferry Company, 26 *Railroad Gazette*, 529. In 1878 the Indianapolis, Cincinnati & Lafayette and the Lafayette, Muncie & Bloomington Railroads, both being operated by receivers, formed with the Wabash and Louisville, New Albany & Chicago Railway a pool on all through business east from Lafayette, 10 *Railroad Gazette*, 387; the receiver of the Indianapolis,

indeed brought the receivers into conflict with State regulations in respect to maximum rates.¹ But the instances of either sort mentioned in the notes, and scores of others which might be added, do not show any clear line of distinction to exist in this matter between railroads in receiverships and the same or other roads out of receiverships.

This much may be said, however, that the same causes which have led to rate-cutting have often brought the rate-cutting roads into receiverships, and the rate-cutting has frequently been continued after the receivership was

Cincinnati & Lafayette Railroad had already agreed to pool with the Cincinnati, Hamilton & Dayton Railroad all the freight and passenger earnings between Cincinnati and Indianapolis, 9 *Railroad Gazette*, 248. In 1877 the receiver of the Kansas Pacific Railway agreed to pool with the Atchison, Topeka & Santa Fé Railroad on all competitive business, 9 *Railroad Gazette*, 380. In the following year the United States Circuit Court approved the Kansas Pacific receiver's pooling agreement with the Union Pacific Railroad, the Omaha Bridge and the Colorado Central Railroad, 10 *Railroad Gazette*, 314. The receiver of the Houston, East & West Texas Railway pooled all Texas business with competing lines in 1885, 17 *Railroad Gazette*, 542. These and hosts of other instances preceded, of course, the prohibition of pools in the Interstate Commerce Act of 1887. The agreement for the division of traffic in 1894 by the Southern Railway & Steamship Association, of which several roads in receiverships were members, was held by the Interstate Commerce Commission (Report for 1894, p. 25) to amount practically to a pooling agreement. Several receivers were members of the Trans-Missouri Freight Association recently dissolved.

¹ As, e. g., the receiver of the Vicksburg & Meridian Railroad, who was ordered, in 1886, in accordance with the order of the Railroad Commissioner of Mississippi, to reduce fares to three cents per mile, and such rates seeming to prove unremunerative, the federal court authorized the receiver to fix rates at such a figure as to pay running expenses and give six per cent. profit on the cash value of the road, and to submit the rates to the Railroad Commission. 18 *Railroad Gazette*, 413, 825.

established. The leading motive to rate-cutting is of course the hope of getting business away from competitors and securing business which would not be carried at all at higher rates. The temptation to the practice is naturally felt the most strongly by roads which, from the fact of their having less direct routes or being unable to offer as good accommodations as their rivals, are at a disadvantage¹ in competing for business. These same disadvantages have often brought the road into bankruptcy, and so it has come about that the same roads have frequently been in the lists of receiverships and among the worst sinners in the matter of rate-cutting, without the former being in any way the cause of the latter. Indeed the allegation that receivers have been largely responsible for rate-cutting is usually based on the *a priori* assumption that the bankrupt roads, being relieved from the necessity, for a time, at least, of paying fixed charges, are able to take business at rates which solvent roads could not afford to take. But there is no advantage to the insolvent roads in cutting rates unless they thereby increase their net receipts, and if the lowering of the rates accomplishes this, the case is no different with the insolvent from what it is with a solvent road. If two railroads have been built where one was adequate to handle the business, the result must be disastrous to at least one, and the building of unnecessary roads has been one of the worst features of American railroad history. But the evil has been an inevitable result of the very existence of the superfluous roads, and

¹ But some famous rate wars have been inaugurated by strong roads.

not of any peculiarity generally connected with receivers' management.

As a general rule the appointment of a receiver does not directly affect most of the railroad's employees. If the road is operated by a lessee, the receiver has no direct dealings with the employees; if the receiver operates the road himself, he must have a large body of men acquainted with railroad service, and usually those who are already in the employ of the company are obviously the most available. It is customary, therefore, for a receiver, on taking possession of the property, to publish a notice declaring that all persons previously in the employ of the company will retain their positions unless otherwise notified by him; and such changes as he does make rarely go beyond a few of the general offices.

But sometimes the employees come immediately to realize that they are working under a different régime. When financial embarrassments have brought about the receivership, the employees' pay is often heavily in arrears. When a receivership is established, the receiver is commonly directed to apply the earnings to payment of wages before paying any of the fixed charges, even where the wages are not protected by positive statute.¹ Even as early as 1859 a federal circuit court directed that, before any revenue of the company² for which the receiver was appointed, could be diverted to pay bonds,

¹ The statute in New York (Revised Statutes, 1896, p. 669) declares wages of employees to be preferred claims.

² The Central Ohio and Steubenville & Indiana Railroads, 15 *American Railroad Journal*, 475, 598.

all debts to employees and to persons who had advanced money for current expenses or payment of interest, should be paid. The reasons for such a practice were reviewed by Judge Drummond of the federal circuit court in 1878 in the case of the receivership of the Indianapolis, Bloomington & Western Railway.¹ Finally the principle was reaffirmed by the Supreme Court the same year in the receivership of the Chicago, Danville & Vincennes Railroad. Chief Justice Waite based the decision partly on public policy, but also on the equities of the case. On the latter point he said: "The mortgagee has his strict rights which he may enforce in the ordinary way. If he asks no favor, he need grant none. But if he calls upon a court of chancery to put forth its extraordinary powers and grant him purely equitable relief, he may with propriety be required to submit to the operation of a rule which always applies in such cases, and do equity in order to get equity."²

Where the revenues are insufficient to pay the wages, the court is apt to authorize the receiver to incur a debt³ in order to keep up wage payments, sometimes even directing the issuance, for this purpose, of receivers' certificates⁴ which become a first lien on all the property.

¹ Turner, *et al.*, v. I. B. & W. R'y Co., *et al.*, 8 Biss., U. S., 315.

² Fosdick v. Schall, 99 U. S., 335.

³ *E. g.*, the Denver & Rio Grande Railway, 1884, 16 *Railroad Gazette*, 543; the Chicago & Great Southern Railway, 1885, 10 *Railway Age*, 556, etc., etc.

⁴ *E. g.*, the Indianapolis & St. Louis Railroad, 1882, 14 *Railroad Gazette*, 385; the Indianapolis, Bloomington & Western Railway, 1877, 9 *Railroad Gazette*, 400; the Atchison, Topeka and Santa Fé Railroad, 1894, 26 *Railroad Gazette*, 557.

The appointment of a receiver indeed not only leads often to promptness in paying current wages, but frequently to the clearing up of arrears,¹ sometimes of long standing,² the personal property of the company sometimes being sacrificed for this purpose.³

But the resources at a receiver's command are not always sufficient to bring an insolvent road to solvency even so far as the current expenses are concerned. Wages may still fall behind,⁴ and receivers may be unable to pay them. It is sometimes impossible for the receivers to float any paper, and they have been obliged to pay employees in receivers' certificates,⁵ which, under such circumstances, were practically of no value.

¹ *E. g.*, the Atlantic & Pacific Railroad in 1875, 7 *Railroad Gazette*, 481; the Indianapolis, Cincinnati and Lafayette Railroad, 1876, 9 *Railroad Gazette*, 126; the Louisville, Paducah & Southwestern Railroad, 1876, 8 *Railroad Gazette*, 374.

² The law of Wisconsin (1885, Ch. 48), makes wages of employees for three months, and that of Utah (1896, Ch. XLIX), for one year prior to the receivership, a preferred debt. See also note 3 page 63.

³ *E. g.*, the Chicago, Indiana & Eastern Railway, 1896, 21 *Railway Age*, 51.

⁴ In 1874, when the Springfield & Illinois Southeastern Railway was about to be sold under foreclosure, some of the employees struck for four months' pay which they feared could not be collected if the receiver was permitted to sell the road, 6 *Railroad Gazette*, 378. When all the employees on the eastern division of the Chicago & Lake Huron Railroad struck, in 1875, four months' back wages were due, 7 *Railroad Gazette*, 225. In 1877 all the employees, and in 1881 the freight trainmen on the Illinois Midland Railway struck, demanding back pay, 9 *Railroad Gazette*, 342; 13 *Id.*, 433. The same was true of freight crews on the Buffalo, New York & Philadelphia Railroad in 1885, 17 *Railroad Gazette*, 399.

⁵ Strikers on the New York & Oswego Midland Railroad in 1874 complained that the receivers' certificates in which they were paid were worthless, 6 *Railroad Gazette*, 86.

The efforts of receivers to bring expenses within the revenues, also, often lead to wage reductions,¹ sometimes of a very serious character, or to an even more serious lengthening of the working day,² perhaps oftener still to a radical cutting down of the working force, throwing great numbers of employees out of work altogether.³ Sometimes the more rigid discipline of the receiver has had a similar effect.⁴

In some respects rights and interests of employees have been peculiarly guarded⁵ under receiverships. The

¹ A strike on the Erie Railway in 1877 was occasioned by reduction of wages ten per cent., ordered by the receiver, 9 *Railroad Gazette*, 284. Even after a strike in 1876 the engineers on the Indianapolis, Bloomington & Western Railway were obliged to accept a ten per cent. reduction, though they gained some reduction in the number of miles constituting a trip, 8 *Railroad Gazette*, 335. Some freight train men on the Buffalo, New York & Philadelphia Railroad who struck in 1885 had had their wages reduced 25 per cent. by the receiver, 17 *Railroad Gazette*, 399. The receiver of the Denver, Leadville & Gunnison Railway, on taking charge in 1894, reduced the wages of all employees, 26 *Railroad Gazette*, 572.

² 4,500 employees were affected by the order of the receivers of the Baltimore & Ohio Railroad in 1896, increasing the hours of daily labor for shopmen from eight to ten, 21 *Railway Age*, 150.

³ *E.g.* the receiver of the Toledo, Cincinnati & St. Louis Railroad, 1885, threw twenty crews out of work by abandoning trains, 10 *Railway Age*, 29; the receiver of the Wabash, St. Louis & Pacific Railway in 1886 closed the shops at Springfield, dismissing three hundred men, 18 *Railroad Gazette*, 85; etc., etc.

⁴ The receiver of the Pacific Railroad of Missouri in 1877 dismissed conductors who were alleged to have stolen \$80,000 in a year from the company, 13 *Railway Review*, 23, 130.

⁵ Judge Powers decided in 1879, in the case of the Portland & Ogdensburg Railroad, Vermont Division, that under the Vermont law a laborer's lien on the personal property of a railroad is not affected under a receivership, but is a claim even ahead of the receiver's certificates, 11 *Railroad Gazette*, 665.

United States court which appointed the receiver of the Atlantic & Pacific Railroad forbade (1896) his black-listing members of the American Railway Union.¹ Judge Treat of the federal court in 1885 stopped the attempt of his receiver to deduct three per cent. attorney's fees from receiver's certificates with which he paid the employees of the St. Louis Coal Railroad.² The Supreme Court of Minnesota³ in 1895 prevented the receiver of the Minneapolis & St. Louis Railway from escaping liability for injuries to employees on the plea that the "fellow-servant act"⁴ of Minnesota did not specify receivers among those subject to its provisions.

In general it may be said that employees of a railroad in the hands of a receiver have ready at hand a court of arbitration to which they can easily appeal, and which has peremptory power to enforce its decisions. Many appeals of this sort have been made,⁵ in some of which the employees gained their petitions in whole⁶ or in part,⁷

¹ *Chicago Record*, June 13, 1896.

² 17 *Railroad Gazette*, 391.

³ *Mikkelson v. Truesdale*, 65 *Northwestern Reporter*, 260.

⁴ General Statutes, 1894, § 2701.

⁵ The most important case, and one of absorbing interest is that of the Union Pacific employees in 1894, a very full account of which may be found in the official report of Ames, *et al. v. Union Pacific Railway Company*, *et al.*, 62 Fed. Rep., 7. Next to this may be mentioned the case of the Central of Georgia Locomotive Engineers reported in *Waterhouse, et al. v. Comer*, 55 Fed. Rep., 149.

⁶ As in the case of the Louisville, Cincinnati & Lexington Railroad, whose receiver ordered a ten per cent. reduction of wages, 1 Aug. 1877, but on the representations of a committee of employees, the chancellor ordered the reduction rescinded, 9 *Railroad Gazette*, 342.

⁷ In the strike on the Denver and Rio Grande Railway in 1885, the shopmen at Denver and Salida petitioned the judge of the United

and when they failed, had at least a *prima facie* justification¹ of the refusal furnished them.

On the other hand some federal courts² have refused to recognize any claim of the employees to arbitration, and the United States Circuit Court for the Eastern District of Pennsylvania in 1895 went so far as to permit the receiver of the Philadelphia & Reading Railroad³ to promulgate a rule that no one would be employed by him who was a member of a labor organization unless he would agree to withdraw therefrom.

But along with the special protection to their rights and privileges, employees of railroads in the hands of receivers are also subject to special responsibilities and limitations. These arise chiefly out of the fact that "it is well established that a court will punish as for contempt, all interference with the operation of a line of railroad which is being managed by its receiver."⁴ In consequence of this, as long ago as 1874,⁵ and frequently since, striking employees have been punished both by

States Circuit Court, who decided that the charges of unfair treatment were not substantiated, but recommended the receiver not to discharge any men because of their going out on the strike, 17 *Railroad Gazette*, 368.

¹ The court refused to set aside the wage schedule enforced by the receiver of the Toledo, St. Louis & Kansas City Railroad in 1894, but commended the 500 employees who filed the petition for doing so instead of striking, 26 *Railroad Gazette*, 91; similarly in the case of a ten per cent. reduction of wages by the receiver of the Cincinnati, New Orleans & Texas Pacific Railway in 1894, 62 Fed. Rep., 17.

² *In re Sea. L. S. & En. Ry. Co.*, 61 Fed. Rep., 541.

³ *Platt v. P. & R. R. Co. et al.*, 65 Fed. Rep., 660.

⁴ Beach's Commentaries on the Law of Receivers, § 336.

⁵ New York & Oswego Midland Railroad, 6 *Railroad Gazette*, 86.

fine and by imprisonment¹ for contempt of court in interfering with the operation of railroads in the hands of receivers, a summary sort of procedure not applicable against railroad employees generally. In the United States Court for the Eastern District of Wisconsin, Judge Jenkins went even farther than this, Dec. 13, 1893, and issued an injunction² restraining the employees of the Northern Pacific Railroad, about twelve thousand in number, from "combining and conspiring to quit, with or without notice, the service of the receivers, with the object and intent of crippling the property in their custody or embarrassing the operation of the railroad, and from so quitting the service of said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad." A second writ of injunction was issued Dec. 22, 1893, containing in addition a clause enjoining all persons from "ordering, recommending, approving or advising others to quit the service of the receivers of the Northern Pacific Railroad Company on Jan 1, 1894, or at any other time." On mature consideration, however, this extraordinary clause was withdrawn on petition of the principal labor

¹ Both the Vice Chancellor of New Jersey and the United States Circuit Court at Pittsburgh in 1877 imposed fines of \$50 to \$100 on strikers and imprisoned them, the latter for 90 days and the former during the pleasure of the court, for contempt in stopping trains of the Central Railroad of New Jersey, 9 *Railroad Gazette*, 390, 410; rioters who stopped trains of the Indianapolis, Cincinnati & Lafayette Railroad at Indianapolis, the same year, were imprisoned 90 days for contempt by the United States Circuit Court, 9 *Railroad Gazette*, 367; etc.

² 19 *Railway Age*, 209.

organizations among the employees. The court, however, refused to modify the original injunction forbidding the employees from quitting the service of the receivers. An appeal was consequently carried to the United States Circuit Court of Appeals, which, Oct. 1 1894, overruled the court below, on the ground that an equity court should not intervene by injunction to compel the affirmative performance of a contract.¹

The general traveling and shipping public have not been directly affected, to any great extent, by the matter of receiverships. In 1884 the receivers of the Wabash, St. Louis & Pacific Railway repudiated tickets purchased prior to the receivership, and were upheld by the United States Circuit Court.² A somewhat similar case occurred in the receivership of the Marietta & North Georgia Railway. The company had contracted with a marble company to carry marble between two points, allowing the same to be stopped over at an intermediate point to be dressed, and then carried to the destination without extra charge, the entire charge for freight being paid in advance. When the road went into a receivership in 1891, the United States Circuit Court decided that the receiver could not be compelled to transport the marble from the intermediate point to the destination, although the freight had been paid for such transportation before the appointment of the receiver.³

But very few receivers have shown any disposition of

¹ *Arthur v. Oakes*, 24 U. S. Appeals, 239.

² 16 *Railroad Gazette*, 560; 17 *Id.*, 815.

³ *Cent. Trust Co. v. M. & N. G. R'y Co.*, 51 Fed. Rep. 15.

this sort. For the most part the operation of the railroads has gone forward without any interruption whatever, and in substantially the same manner as before, so far as public accommodations are concerned. Few travelers, except as they might read the news in the papers, would discover that a receiver had been put in charge. The public doubtless has occasional cause for complaint, but these causes have seldom differed either in nature or in degree from causes of complaint against the management of the same railroads by their owners.¹ Indeed the appointment of a receiver has sometimes led to the resumption of operations of a road which had been temporarily abandoned, and in the few cases of the opposite sort, the receiver has seldom abandoned a road on which there was any considerable traffic.

The difficulty of the public in connection with receiverships has come mainly when injuries were sustained or

¹ For example, in 1885, the Standard Oil Company, by threats of withdrawing its patronage and building a pipe-line, induced the receiver of the Marietta & Cincinnati Railroad to make an agreement to charge all other shippers 35 cents per barrel on oil from Macksburg to Marietta, Ohio, while a rate of only 10 cents per barrel was charged the Standard Oil Company, and further, the receiver agreed to retain only 10 cents on each barrel delivered by other shippers, and turn over the other 25 cents to the Standard Oil Company. This particular receivership, however, was in the jurisdiction of Judge Baxter of the United States Circuit Court, who did not regard the interest of the Standard Oil Company as paramount to all public interests. He discharged the receiver who made this agreement, and appointed another in his place. Judge Baxter characterized the agreement as "discrimination so wanton and oppressive it could hardly have been accepted by an honest man, and a judge who would tolerate such a wrong, or retain a receiver capable of perpetrating it, ought to be impeached and degraded from his position." *Trustees v. C. & M. R. R. Co. et al.*, 31 Fed. Rep., 689.

other causes for damages arose. Notwithstanding some statute requirements, certain courts have displayed wonderful ingenuity in evading the law and securing practical immunity from the duties and responsibilities of common carriers for their receivers. Persons having claims against railroads for damages have consequently found considerable difficulty in securing their rights from receivers. The chief cause has been the pernicious rule, all but universal,¹ that a receiver could not be sued except on permission of the court which appointed him. In the early practice it was very rare indeed that leave was given to sue a receiver in a court of law. The result was that the plaintiffs had to present their claims often at great expense at a distant and inaccessible point, and the litigation was all concentrated in the equity side of the court, where the suitor was denied a trial by jury, although his demand was a purely legal one and not a matter in equity at all. One having a demand against a railroad receiver was required to assert it by filing a petition of intervention, which was referred to the master of the court, whose report and the exceptions thereto would at some time come up for consideration by the court.²

In April 1884, Judge Caldwell, then judge of the United States District Court for the Eastern District of Arkansas, whose name has been preëminently associated with the reform of abuses in connection with receiverships, adopted a rule³ that receivers appointed by his

¹ Except in the United States Courts since 1887.

² 30 *American Law Review*, 161 ff.

³ *Dow v. Memphis, &c., R. Co.*, 20 Fed. Rep., 260.

court might be sued in any court of competent jurisdiction without leave. A few years later this principle was embodied in the third section of the Act of March 3, 1887,¹ and hence became binding on all federal courts. It leaves the suit subject to the general equity jurisdiction of the court in which the receiver was appointed, "so far as the same shall be necessary to the ends of justice."² "The judgment of the State Court is conclusive as to the amount of the debt, but the time and mode of its payment must be controlled by the court appointing the receiver."³ For "the right to sue the receiver in the State court would be of little utility if its judgment could be annulled or modified at the discretion of the court. It is open to the receiver to correct the errors of the inferior courts of the State by an appeal to the supreme court of the State. But this [federal] court is not invested with appellate or supervisory jurisdiction over the State courts, and cannot annul, vacate or modify their judgments."³

One of the most flagrant attempts to shut out creditors from securing their rights, was in connection with the receivership of the Texas & Pacific Railway. In discharging the receiver, Oct. 31, 1888, the United States Circuit Court for the Eastern District of Louisiana "ordered that all claims against the receiver as such up to said 31st of Oct. 1888, be presented and prosecuted by intervention prior to Feb. 1, 1889, and

¹ 24 Stat., Ch. 373, p. 554.

² 24 Stat., Ch. 373, p. 554.

³ Cent. Trust Co. v. St. L. A. & T. R'y Co., 41 Fed. Rep., 551.

if not so presented by that date, that the same be barred, and shall not be a charge on the property of said company,"¹ thus endeavoring by judicial fiat to outlaw all claims after the lapse of only three months. The Supreme Court of Texas, however, has enforced claims against the company at a later date,¹ refusing to honor this order, especially as the requirement that claims be prosecuted by intervention is plainly an explicit violation of the Act of Congress permitting suits against a receiver to be brought in any court of competent jurisdiction.

The public in organized capacity as the state have some occasion to complain of the management of receivers. Although it is a well established principle that receivers operating railroads are common carriers, some courts have shown a disposition to manage railroads utterly regardless of all laws for the regulation of railroads, where the law does not expressly specify receivers among those subject to the provisions of the act.² Even before the Act of March 3, 1887, which directs receivers operating railroads to conform to the legal regulations of the States in which the property is situated, some judges governed themselves by the very obvious principle of justice on which this law is based.³ And since that

¹ *Texas & P. R'y Co. v. Johnson*, 76 Texas, 421.

² To remedy such an abuse the legislature of Massachusetts was obliged to enact a special law prohibiting the obstruction of highways by the receivers and assigns of railroad corporations. Acts of 1895, Ch. 173.

³ For example, Judge Deady, in 1885, ordered the receiver of the Oregon & California Railroad to obey the law of Oregon limiting passenger fares to four cents per mile and freight rates to those in effect 1 Jan. 1885, and forbidding discriminations, 10 *Railway Age*, 327.

time a federal court decided in August 1890, that "the receiver of a railroad in Florida, where discrimination in freight rates is a criminal offense, has no right to make such a discrimination."¹ But in other instances it has suited the pleasure of federal courts to put themselves to considerable trouble to interfere with the enforcement of valid State laws in so far as they applied to railroads in the hands of receivers of the federal courts.

From 1889 the South Carolina Railway, and from 1892 the Richmond & Danville system, operating 1,419 miles of railroad in the State of South Carolina—considerably more than half the total railroad mileage of the State—were operated, until 1894, by receivers appointed by the United States Circuit Court for the District of South Carolina. On the claim that the taxes were excessive in amount, the receivers, under the direction of the court, refused to pay the taxes for 1890-1, amounting to about \$100,000, and the taxes for 1891-2, amounting to about \$60,000.² In conformity to the law of the State, several county treasurers issued tax executions, and the sheriffs proceeded to seize certain property of the railroads. On the order of the federal court the sheriffs were arrested and fined for contempt of court, and imprisoned until the fines should be paid. On application for a writ of habeas corpus the Supreme Court

¹ *Cutting v. Fla. Ry. & Nav. Co.*, 43 Fed. Rep., 747.

² The facts of the case are detailed at length, and the general subject of receiverships is discussed in a memorial of the Legislature of South Carolina to the Congress of the United States, published in 28 *American Law Review*, 161-195; see also the Supreme Court's decision, *In re Tyler*, 149 U. S., 164.

of the United States sustained the Circuit Court in committing the sheriffs for contempt. But the decision of the Supreme Court declared that property in the hands of a receiver "is not thereby rendered exempt from the imposition of taxes by the government within whose jurisdiction the property is, and the lien of the taxes is superior to all other liens whatsoever;" and that it is "the imperative duty of the court to recognize as paramount, and to enforce with promptness and vigor, the just claims of the authorities for the prescribed contribution to the State and municipal revenues, and when controversies arise as to the legality of the tax claims, there ought to be no serious difficulty in adjusting such controversies upon proper suggestion." Unfortunately, however, the State of South Carolina, under the decision, has no means of holding the court to its "imperative duty,"¹ and the receivers were, for a long time, sustained by the Circuit Court in their refusal to pay taxes, simply because the State had at its command no adequate means to compel payment.²

The same court also instructed its receivers to ignore the dispensary law of South Carolina, and transport spirituous liquors in defiance of that law.³ Certain State constables were indiscreet enough to seize without a warrant some liquors which were being transported in

¹ "Property in the hands of a receiver of a federal court cannot be reached by proceedings for the collection of state taxes, without the consent of such court." *In re Tyler*, 13 Supreme Court, 785; 149 United States, 164; *Oakes et al. v. Myers*, 68 Fed. Rep., 807.

² A settlement was finally made in regard to the taxes, and the roads have been put into the hands of the corporations which purchased them at the foreclosure sales.

³ The facts of this case are also detailed in the memorial to which reference was made above, note 2, page 138.

violation of the law, and thus put themselves in a position where their conduct could not be sustained on appeal to the Supreme Court of the United States. But the receivers, in their general policy of lawlessness, have attempted no justification of themselves, but have simply relied on the fact that defects in our laws enable federal judges, who are so disposed, to be effective shields to prevent certain criminals being brought to justice by the State.

CHAPTER IV.

THE FUTURE OF RAILROAD RECEIVERSHIPS.

In considering suggestions for alleviating the evils of receiverships, certain fundamental facts must be kept in mind which are commonly overlooked in discussion of these matters. In the first place the railroad system of the United States is already for the most part constructed. The railroad mileage of the United States is nearly as great as that of all the rest of the world combined. Several States of the United States have even more miles of railroad in proportion to their area than the best-supplied countries of Europe. It would therefore seem perfectly obvious that many suggestions which might be of great value to a country just entering upon an era of railroad development, would be quite impracticable for the United States. Our railroad system has developed in many respects very differently from what might have been desired, but it has been built, and it cannot now be torn up and built over again. The problem is, how to make the best of what we have.

In the second place, a very large number of the railroads of the country are subject to financial limitations of such a sort that those who have charge of them find it impossible to adopt some expedients which have proved useful elsewhere. Investors have formed certain habits, which, however irrational, cannot be instantly changed

by reformers, but are at best subject only to gradual modification.

In the third place, little is gained by suggesting a complex and complicated scheme of reform, since such a plan involves too great a risk of total failure. The only direction in which improvement can be expected is through simple modifications which can be made with comparative ease, and modifications so little dependent upon one another that some may be abandoned, if found impracticable, without the necessity of abandoning all. In formulating a new plan, organic connection between all the parts is very desirable, but the case is very different with proposals for modifying an old structure. Plans most likely to prove practicable must depend largely on fostering and stimulating desirable tendencies which have already begun to manifest themselves, and checking or diverting tendencies which plainly aggravate the difficulty. Discovery must play a much more important part than invention.

To begin with, the evils of receiverships may best be avoided by removing the causes of receiverships. In so far as railroads are hampered by legal restrictions to prevent consolidation, they should be relieved by the repeal of such laws. More effective means must be found to prevent destructive rate wars; and to this end the Interstate Commerce Commission might well be empowered to prescribe minimum rates between competitive points. If the intention of the law to authorize the Commission to limit maximum rates could be made clear beyond question, the chief objection to legalized

pooling would disappear. Legal suppression of "ticket-scalping" would be a distinct advantage if the law could prevent railroad companies themselves from supplying scalpers with quantities of tickets at "cut" rates.

The public policy which has encouraged the building of needless railroads, and so dividing up the traffic as to make it unprofitable even at high rates, may well be reversed. Instead of donating land-grants, right of way, depot-grounds and bonds to companies proposing to build new railroads, most of the States might better refuse them charters altogether, unless it can be clearly shown that the new railroad has a reasonable prospect of developing enough new business to make it profitable.

But after all has been done the fact still remains that much of the cause of receiverships lies in the past and cannot now be undone. When the building of a factory proves a mistaken venture, the factory is transformed into something else or allowed to fall into decay, but a railroad once built and equipped can almost always be made to earn something, and consequently few railroads are ever abandoned; the most luckless ventures still remain to complicate the problem. The excessive building of railroads has permanently lessened the earning capacity of railroads generally. Foreclosure and reorganization are often only the necessary recognition of this unpleasant fact.

So after every means has been taken to reduce to a minimum the occasions for receiverships, there will still remain the necessity for a somewhat frequent resort to this procedure. It is important, therefore, that a pro-

ceeding to which such frequent recourse must be made, be adapted as perfectly as possible to the ends which it is intended to subserve.

One of the most urgent needs is for the codification of the law of receiverships as applied to railroad corporations. This could be accomplished with comparative ease at least with the federal law, and it is the federal law which is of most consequence in this matter.¹ A few years ago a codification would have been premature. It might have prevented some abuses, but the system would have lacked flexibility, and thus have given rise to other evils quite as deplorable. While the idea of the receivership as applied to the modern railroad was in the earlier stages of its development, it was well to allow the utmost latitude to the courts, in order that the law might come to be the outgrowth of practical experience rather than a creation on a theoretical basis. But the last half century has seen the growth of a mass of decisions covering pretty fully the chief points which have risen and are likely to arise in the handling of receiverships. Doubtless some wholly new questions will arise in the future, but they will be apt to be connected with new phases of railroad development which cannot be readily anticipated, and latitude could still be left to judicial interpretation to meet such cases.

The decisions to which reference has been made are to some extent conflicting, since comparatively few have

¹ By reason of the bondholders, at whose suit a receivership is commonly instituted, often being citizens of other States than the ones in which the railroads are incorporated, the suits are more apt to be prosecuted in the federal than in the State courts.

come from the final court. In some instances it is of less consequence which decision is accepted than that there be certainty and uniformity. This there cannot be until the Supreme Court passes upon the points or they are fixed by statute. In other cases of conflict the preferable one is not difficult to select. Some of the worst abuses of the receivership¹ have been in direct violation of the principles of the common law, but judges who are so disposed can violate these principles with impunity so long as they are not restrained by statute or by specific declarations of the Supreme Court.

To some extent, however, these decisions have disclosed certain tendencies which need to be checked by law, or defects which ought to be remedied.

1. The law should limit rigidly the causes for which a receiver may be appointed, and should require the applicant to show conclusively that causes exist. A receiver should be appointed only upon reasonable proof that such action is the only practicable way to prevent definite injury to the interests of the petitioner; and it should be demonstrated that this injury is clearly in the nature of an injustice, not, for example, such injury as might accrue to a bondholder by reason of the execution of a judgment legally obtained. If the appointment is made immediately, it should be temporary, to last only until all interests involved have had an opportunity to be heard. The law should specify who may petition for a receiver, and should especially prevent the possibility

¹ Such, for example, as the practice of appointing interested parties as receivers. See above, pages 98-100.

of a "friendly receivership" being secured by the officials to strengthen and perpetuate their own power.

2. The law should limit the duration of the receivership, by prescribing conditions on the fulfillment of which the receivership must be terminated, leaving to the discretion of the court an earlier termination where practicable.

3. Suitable means should be taken to secure the appointment of a proper person as receiver. The election of a receiver by the bondholders has been advocated. There are excellent reasons and weighty authorities¹ in favor of such a plan. Possible weaknesses may be in the conceivable contingency of a failure of a majority of the creditors to agree on a receiver, and still more in the fact that it seems hardly in accordance with the fundamental idea of the receiver as a disinterested party and not a representative of a single class of interests; for unlike an ordinary case of insolvency, a railroad case involves not simply two classes, a debtor company on one hand, and a body of creditors on the other, but a complex of very varied interests not by any means identical. But if the appointment is still left to the court, the naming of an officer or stockholder of the company should be definitely forbidden. The difficulty of procuring competent persons can hardly be urged in good faith against such a prohibition, especially while the customary liberality in the way of remuneration is continued.

¹ See President Moorfield Story's address at the Convention of the American Bar Association, Aug. 1896, 36 *Railway Review*, 467.

4. The powers and duties of receivers should be defined as closely as possible. It is probably necessary to allow considerable latitude to the receiver, but the tendency is to allow him almost unrestricted power. The necessity for permitting a receiver to build new railroads, if it ever existed, has certainly passed away. In a few cases, where the earning of a valuable land-grant hinged on the completion of a road by a certain date, it might seem an unnecessary hardship to require construction to stop as soon as a receiver is appointed. But with the discontinuance of land-grants this excuse has disappeared.

Particularly should the power of receivers, under direction of the court, to issue receivers' certificates which constitute a first lien on the railroad, be limited to such emergencies as necessitate their issue in order to prevent serious injury to the property. By all means the issue of receivers' certificates for building new lines of railroad, branches or extensions, should be forbidden. If funds for these purposes cannot be raised by other means, there is little likelihood that the enterprise ever will prove productive, and neither the public nor investors will be benefited by increasing the mileage of unprofitable roads. Indeed it is a question whether receivers' certificates should ever be allowed priority to the claims of any class of creditors who do not assent to their issue, unless absolutely necessary in order to pay taxes, or wages or other operating expenses in the narrowest sense of the term. And issue of certificates for these purposes should be permitted only as a temporary expedient. If, in spite

of rigid economy, the operating expenses exceed the income for a protracted period, the road must ultimately be abandoned anyway, and its operation may as well be suspended sooner as later.

The law should totally abolish certain privileges and prerogatives which have come to attach to the receiver, not from considerations of equity or public policy, but because of the supposed sacredness of his person as the representative of the court. While, to avoid needless complications, it may be preferable for the court which appoints a receiver, to retain some control of suits brought against the receiver, every facility ought to be offered to those who have causes for suits, to prosecute them as readily as if they were brought against private individuals or corporations. The receiver should be just as amenable to the State law and as much within reach of suitable legal processes as other persons. The notion of a receiver as being elevated above all law and subject only to the caprice of a court, is intolerable.

The law should accurately define preferential debts,¹

¹ The reasons for giving certain obligations priority of claim over the mortgages, are shown fully by Judge Hanford of the federal court for the Oregon district in *Farmers' Loan & Trust Co. v. N. Pac. R. Co.* (71 Fed. Rep., 245). He says: "A railroad is a public highway, designed for public use. A corporation owning it enjoys a franchise which makes it in a measure a public servant, obligated to serve the public by keeping the road in operation. Railroads cannot be operated without incurring expense and liabilities for injuries accidentally inflicted. The laws of the country require that expenses in operating railroads, and liabilities arising from injuries committed in operation thereof shall be paid; and he who takes a mortgage on a railroad does so with the knowledge that the railroad must be operated, and that its earnings must, so far as necessary, be absorbed in the payment of

and not permit the revenues of the railroad to be diverted to any other objects than those specified. The law should also fix the time that must elapse before claims accruing prior to the receivership can be outlawed, as well as claims against the receiver, and should not permit a court arbitrarily to annul such claims when only a few months old. It is somewhat singular that while a "sovereign state" is forbidden to make any law impairing the obligation of a contract, this prerogative should be exercised freely by federal judges at their unlimited discretion without any specific authority of law whatever.

5. The jurisdiction of different courts in receivership cases needs to be established clearly by statute. The infrequency with which the affairs of important railroads are confined to a single judicial district, make this a matter of considerable importance. The need of legislative remedy was urged in the annual report of the attorney-general of the United States for 1895.¹ After a

operating expenses, and discharging the burdens which the law places upon such property." See also *Fosdick v. Schall*, 99 U. S., 235, quoted above, p. 127.

¹ "The Northern Pacific litigation has called attention in a striking way to the necessity which has long existed of legislation to regulate the appointment of receivers and judicial sales of railroads, parts of whose lines are in different circuits. Public, as well as private, interests require the preservation of the unity of such lines in their management pending the foreclosure, and in their sale. This can now be accomplished only by harmony of action among the courts of the various circuits, but the appointment of receivers and the repetition of orders in each circuit cause a multiplication of trouble and expense which can well be avoided. When, however, the different courts refuse to coöperate, not only are public and private interests in the property imperilled and costs more greatly multiplied, but there is constant risk of scandal from which the administration of jus-

good deal of wrangling and expense, the question of jurisdiction is usually settled by some sort of comity, but an authoritative settlement in advance of the exact relation of the different courts to the matter, would be of great advantage.¹ The question involves no very serious difficulty. It does not so much matter what decision is reached, as that a clear and explicit rule be adopted. It is especially unfortunate that now there is no single court of final appeal in cases of railroad receiverships. "By section 6 of the act of Congress creating the Circuit Court of Appeals, approved March 3, 1891, litigants in this class of cases are deprived of the right of appeal to the Supreme Court of the United States, since in such cases the original jurisdiction of the circuit courts is ordinarily dependent solely upon the diverse citizenship of the parties, and the judgment of the Circuit Court of Appeals is made final, unless that court shall see fit to certify to the Supreme Court questions of law upon which it desires the instruction of that court. As the result of this unfortunate legislation, nine different courts of appeal now exist which are thus, in effect, made courts of last resort in the most important litiga-

tice should be kept free. There seems to be a general demand for relief. It can readily be afforded by providing that suits to foreclose mortgages or appoint receivers of such railroads shall be brought in the circuit where the principal operating offices are, or in the circuit in which the chief terminals are situated, or in that containing the greatest length of track, or full jurisdiction might be given to the court in which suit is first brought." At the beginning of the receivership the Northern Pacific Railroad operated lines in the territory of eight federal judicial districts in three different circuits, besides holding property in a district of still another circuit.

¹ See also the suggestion made below, page 154.

tions which come before the federal courts. Uncertainty and want of harmony in the decisions of these courts must necessarily result from this system."¹

So far these suggestions do not introduce any innovations. They are, in fact, quite in harmony with the best practice of the courts at present. It is proposed not so much to change the nature of the procedure as to bring the practice of all up to the standard set by the best. They differ from some suggestions made by eminent lawyers and railroad managers not so much in their matter as in the proposal to bring the courts up to this standard by legal compulsion rather than to be content with simple exhortation. Efforts have been indeed made to accomplish some of these changes by legislation,² though they have aimed rather to cure cer-

¹ High, *Treatise on the Law of Receivers*, 3d edition, (Chicago, 1894), Preface.

² The House of Representatives, July 20, 1894, passed a bill (H. R. 6284, 53d Cong., 2d Session) to prevent interference in the collection of State, county and municipal taxes assessed against corporations in the hands of receivers, but it failed of consideration in the Senate. In the 54th Congress, bills were introduced in the House and referred to the Judiciary Committee, to define the liabilities of receivers or managers of railroads or other property appointed by the United States courts, to prescribe where and how they can be sued and served, etc., (H. R. 1966); relating to the appointment of receivers for and the reorganization of insolvent railroad corporations (H. R. 8895); also one (H. R. 4) which was referred to the Committee on Commerce, making ineligible for appointment as assignee or receiver, officers, etc., of corporations engaged in interstate commerce. None of these were reported. On March 24, 1896, the House passed a bill (H. R. 325) providing that United States railroad corporations shall, for purposes of jurisdiction, be deemed citizens of the respective States into which their lines of railway may extend. The bill died in the Senate Judiciary Committee. Bills were introduced in the Senate and referred to

tain defects by piecemeal, than to bring the whole system of receiverships into harmony with modern requirements.

This suggestion for a codification of the law, if adopted, would tend materially to reduce the number of receiverships. A limiting of the number of causes for which receivers could be appointed would lead to the denial of a larger proportion of the petitions for receiverships. A prompter closing up of receiverships would leave a smaller number in effect at any time. If interested parties could not be appointed as receivers, the instigating motive which prompts too many applications for receiverships would be entirely removed; and a closer limitation of the powers of the receiver would operate to some extent in the same way. For while other causes have contributed powerfully to increase the number of receiverships in recent years, there can be no doubt that the loose practice of the courts has led to much greater readiness to apply for a receivership, at the same time that an undue share of the petitions were granted.

the Judiciary Committee to declare jurisdiction of United States courts in suits for foreclosure of railroad mortgages or enforcing any lien against, running through two or more districts or circuits (S. 1255); and one (S. 331) providing that no person shall be eligible as assignee or receiver of a bankrupt corporation engaged in interstate commerce who shall have been a director, officer or employee of such corporation at any time during the three years next preceding such bankruptcy. The former was not reported at all and the latter was reported adversely. Two of the House bills mentioned above (H. R. 1966 and 8895) have been reintroduced in the 55th Congress and referred to the House Judiciary Committee (as H. R. 1584 and 63 respectively), which also has charge of another (H. R. 436), to amend the judiciary act of August 13, 1888.

And while nevertheless receiverships will doubtless continue to be numerous for some years to come, a codification of the law along the lines suggested, would go a great ways toward eliminating at least the more obvious of the evils of such receiverships as should still be necessary.

There is still one other direction in which it is worth considering whether an important reform might not be accomplished. One naturally hesitates to suggest what may at first thought seem to complicate still further the machinery of the judiciary. It occasionally happens, however, that when new functions are necessary, it may really simplify matters for a new organ to be developed. Whatever objections may be discovered, there are strong considerations to be found in favor of the establishment of a federal bureau or commission charged with judicial powers, to have exclusive charge of such railroad receiverships as might be brought under federal jurisdiction. On the side of the interest of the railroad properties, several things may be said in favor of a complete separation of these cases from the circuit courts.¹

¹ Since these paragraphs were written the following editorial has been noticed in the *American Law Review* for April-May 1896: "The manner of dealing with insolvent railways is a very large question, manifestly too large for State action, except in the case of railways which lie wholly within the limits of a single State. We have half a notion that the best way to deal with it would be for Congress to clothe the Interstate Commerce Commission with judicial powers, constituting it a sort of railway court of bankruptcy, under such safeguards as should maintain, on the one hand, the right of the public to have the insolvent interstate railroad safely operated, and such as should, on the other hand, conserve, as far as possible, the rights of creditors according to their respective priorities." 30 *American Law*

1. All conflicts of jurisdiction in receivership cases between different federal courts would be at once obviated by taking all such business out of their hands; while there would never be the slightest occasion for dividing up a single railroad system into several receiverships, because of its lines happening to lie in different States.

2. A body devoted exclusively to the consideration of railroad receiverships, could handle the business much more expeditiously than a court which is obliged to carry on its docket every sort of case in civil and criminal law and equity.

3. A very large share of the work of a court in the matter of railroad receiverships is not judicial but administrative in its character. The formation of a separate court or commission would make it feasible to put it in the hands of men chosen for their peculiar fitness for this special work in a way which is hardly possible for the judges of the courts in general. The experience which could be gained in such a position, too, would soon develop capacity for dealing with this kind of business which could not be expected of the judges of the circuit courts.

4. While comparatively of less consequence it may be worth mentioning that much could be gained in the way of harmonious coöperation in management if all the railroad receiverships of the country were under the direction of a single court. In times when a large percent-

Review, 260. The suggestion in the text would obviate the objection which would naturally occur to one against adding so materially to the work of a commission whose docket is already overcrowded.

age of our railroad system is in receiverships, this consideration might be of some importance.

5. The concentration of this business would bring it much more clearly before the public, and for this reason alone would have a powerful tendency to rid it of many of the corrupt or at least questionable practices which have too often characterized receiverships. Many among the numerous judges scattered over the country may safely risk incurring the odium attaching to favoritism in the appointment of receivers and a mild degree of corruption in the operation of the property, especially when only a very small fraction of the public is sufficiently informed to be able to fix the responsibility on any individual judge. But no bench could withstand the concentrated force of public opinion which would be directed in criticism against it in the event of such practices being continued, if this court was generally known to have practically all the receivership business of the country in its hands.

6. Together with its effect in compelling a higher standard of appointments, the concentration of the work of receiverships would bring within reach of such a court a greater range of choice of available men for receivers than is accessible to the judge of a single sectional court, who has only now and then an occasion to appoint a receiver. When a court having all the railroad receivership business in its hands had found a man efficient as a receiver, there is no reason why he should not, after completing his work, be appointed to the next important receivership established by the court. In a short time

an exceptionally skilled body of men would be at hand, the new ones being first put in charge of only the least important roads, and when a receivership became necessary for a great system, only men of great experience as receivers and who had proved their efficiency and integrity by years of successful service need be considered as possible candidates for appointment. It is too palpable to require any demonstration that such an arrangement would greatly increase the percentage of receiverships which would reach a close satisfactory both to the parties directly concerned and to the public as well.

Such a court ought not to be established to meet a temporary emergency. For reasons already pointed out, however, there is no room to doubt that its docket would be well filled for some years to come. The legal details of the plan could be carried out without any severe strain on the legal talents of the law-making power. If it were desirable to reduce the judicial powers of the court to a minimum, so as to restrict its work to administration as far as possible, it could be so arranged that a receiver could be sued in any court in which the railroad company itself could be sued, or if this were deemed impracticable, arrangements could be made for periodical sittings of the court in different parts of the country where it would be accessible to suitors. The court could be brought into harmony with the judicial system of the country by providing for appeals on points of law to the Supreme Court of the United States.

A withdrawal of the business of railroad receiverships from the ordinary courts and a concentration of them in

a bureau arranged purposely to meet the peculiar needs of business of this sort, would make it possible for receiverships to be managed in a much better way than can be done under present arrangements. At the same time it would be a great relief to the courts, for they are being crowded with the growing volume of receivership cases, which require a share of the courts' attention quite out of proportion to the importance of the business, important as it is; and their withdrawal would also take from the courts a patronage which has in some cases proved likely to become a serious menace to their integrity.

APPENDIX

ON THE SOURCES OF INFORMATION.

The *Railway Age* (Chicago) publishes annually, since 1884, lists of railroads for which receivers were appointed the preceding year. Similar lists were also published for the years 1876-9. These lists have been reprinted in other periodicals. They give the mileage of each road named, and the amount of its capital stock and funded debt. The figures are subject to more or less correction, especially as regards mileage. (See also above, note 2, page 67). The lists are not quite complete, and include some roads which should be omitted. The summaries reprinted year after year do not seem to have been corrected. The *Railway Age* of 15 Dec. 1893, gives a nearly complete list of the railroads which were in the hands of receivers at that date.

Poor's Manual of Railroads for 1884 gives (page 1009) a list of railroads placed in the hands of receivers during the first six months of 1884, and the names of the receivers.

Poor's Manual of Railroads for 1886 gives a list of roads for which receivers were appointed in 1885, with, in some instances, the exact date of the appointment, the number of miles owned, and the amount of stock, bonds and debt. An accident to the printer's form, however, pushed the dates just far enough out of line to destroy their value. In some other respects the list is not entirely correct.

Poor's Directory of Railway Officials, published separately from the Manual, beginning with 1886, gives, in the case of railroads in the hands of receivers, the name and address of the receiver. The same is true of Ashcroft's Railway Directory for 1862 (New York, 1862), though "owing to the unhappy state of the country" the directory is not altogether complete.

The Interstate Commerce Commission's Seventh, Eighth and Ninth Annual Reports of the Statistician contain nearly complete lists of railroads which were in the hands of receivers at the dates of the reports, June 30, 1894, 1895 and 1896. The lists give the exact official title of each road, and also, in the case of subsidiary roads, of the controlling company, the number of miles owned, the number of miles operated, and the date of the appointment of the receiver. Unfortunately, however, the date does not necessarily show when the receivership

began, but only when the individual in charge received his appointment,—a matter of trifling concern to the public. The financial statistics are, of course, given with those of the other railroads in the body of the report.

Previous statistical reports of the commission have given no particular notice to receiverships, except that, in the column of "Remarks" in the classification of railways and mileage, the name of the receiver and, since 1889, the date of his appointment have occasionally appeared in connection with the name of a road which was in a receivership at the date of the report. Nothing like a complete list could be compiled from this source, however.

The successive numbers of Poor's *Manual of Railroads* (published annually 1868 to date) give more or less information about nearly all the railroads of the United States, but no systematic attention is paid to receiverships. If a road has been in the hands of a receiver during the current year the fact is usually mentioned in the account given of the road, (though not always, especially in the earlier years,) and generally the name of the receiver appears, sometimes the date of his appointment. Misprints, especially in the matter of dates, are frequent, however, and sometimes stand year after year without being corrected. The later numbers especially give condensed histories of many of the railroads, or cite references to such histories in earlier numbers; if a road has passed through a receivership, the fact is very apt to be mentioned, sometimes with the occasion and the date of its beginning and the time and terms of its close. As a great number of receiverships resulted, however, in the road merging its identity in another, and many other roads which have continued their independent existence after the end of the receivership have later been absorbed into other systems, only a comparatively small number can be traced out in this way.

Poor's *History of the Railroads and Canals of the United States of America* (New York, 1861), Flint's *The Railroads of the United States, their History and Statistics* (Philadelphia, 1868), and Vernon's *American Railroad Manual* (New York, 1873-4), give much information in respect to such receiverships as had been established at the time of their publication, but as the facts are scattered throughout the whole mass of information in regard to all the railroads of the country, they are very difficult of access.

A few monographs treating of single railroads throw a little light on the history of a few receiverships, particularly Adams, *A Chapter of Erie* (Boston, 1869), *Official History of the Great Strike of 1886 on the Southwestern Railway System* (Missouri Bureau of Labor Statistics, 1887), and Davis, *The Union Pacific Railway* (Chicago, 1894).

The annual Reports of the Commissioner of Railroads to the Secretary of the Interior give facts in regard to the receiverships of government-aided Pacific railroads.

The reports of the State railroad commissions give a huge mass of information about the railroads in the respective States, though no special attention is paid to receiverships, and many of the reports ignore them altogether.

Van Oss, *American Railroads as Investments* (New York, 1893), and Leyen, *Die nordamerikanischen Eisenbahnen in ihren wirthschaftlichen und politischen Beziehungen* (Leipzig, 1885), are notable among several books which give some intelligent account in regard to a number of railroads, though even incidental allusions to receiverships are few.

Several articles in current periodicals should be mentioned, especially H. C. Adams, *The Railway Situation*, 10 *Review of Reviews*, 186; S. Sterne, *Railway Reorganization*, 10 *Forum*, 37, and *Recent Railroad Failures and Their Lessons*, 17 *Forum*, 19; H. W. Bartol, *Danger of Receiverships*, 32 *Popular Science Monthly*, 236; H. Wollman, *The Bane of Friendly Receiverships*, 158 *North American Review*, 250; C. Barrett, *Dangers of Receiverships*, 11 *Railroad Gazette*, 386; Gov. Tillman (S. C.), *Abuse of Railroad Receiverships*, Governor's Message, 33 *Railway Review*, 732; *Methods and Practices of Railroad Receiverships* (editorial), 33 *Railway Review*, 767; *Friendly Receiverships* (editorial), *Bradstreet's*, January, 1894. Most of these articles, however, deal in a general way with the evils and abuses of receiverships. Very few of them give specific facts with any definiteness; the same is true of *Greene, Corporation Finance* (New York, 1897), which has a chapter on *Corporation Reorganizations and Receiverships*.

Mainly, however, the history of receiverships must be learned from the reports of the receivers and of the railroad corporations, and from the news columns of the press, particularly of railroad periodicals. Especially valuable for this purpose are *The American Railroad Journal* (New York, 1832 to date), *The Railroad Gazette* (Chicago and New York, 1864 to date), *The Chicago Railway Review* (1870 to date), *The Railway Age* (Chicago, 1876 to date), *The Engineering News* (Chicago, 1874 to date), *The Engineering Magazine* (New York, 1891 to date), and the *Travellers' Official Railway Guide* (New York, 1868 to date).

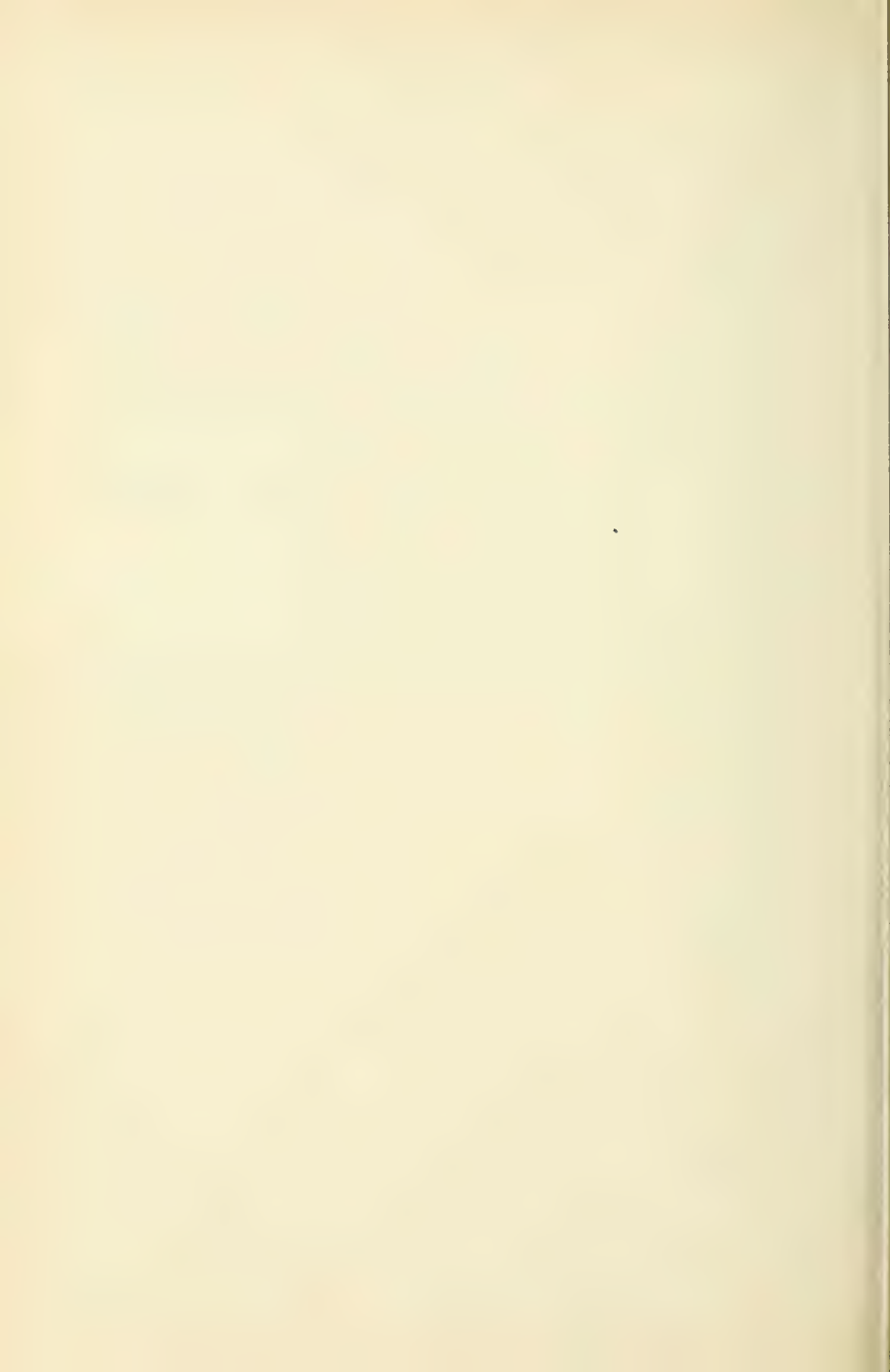
Some light is thrown on the financial history of railroads both in and out of receiverships by the reports published in financial journals, particularly the *Bankers' Magazine* (Baltimore and New York, 1846

to date), *The Commercial and Financial Chronicle* (New York, 1865 to date), *The Financier* (New York, 1871 to date), *Bradstreet's* (New York, 1880 to date), *The National Corporation Reporter* (Chicago, 1890 to date). *The Bond Record* (New York, 1893 to date), gives much attention to railroad matters.

All the law journals give some attention to railroad receiverships, but their treatment of the subject is seldom of interest save from the purely legal standpoint. Some striking exceptions, however, are H. C. Caldwell, *Railroad Receiverships in the Federal Courts*, 30 *American Law Review*, 161; S. D. Thompson, *Court Management of Railroads*, 27 *American Law Review*, 481, and *Foreign Receivers and Judicial Assignees*, 6 *Green Bag*, 120; *Memorial of the General Assembly of South Carolina to Congress*, 28 *American Law Review*, 161; G. W. McCrary, *Liabilities Incurred by Receivers of Railroads*, 17 *American Law Review*, 841.

The legal technicalities of receiverships are exhaustively treated by C. F. Beach, *Commentaries on the Law of Receivers with Particular Reference to the Application of that Law to Railway Corporations* (2nd edition, revised by William A. Alderson, New York, 1897); J. L. High, *A Treatise on the Law of Receivers* (3rd edition, Chicago, 1894); F. S. Wait, *Treatise on Insolvent Corporations, the Rights, Powers and Duties of Receivers Thereof* (New York, 1888); Gluck & Becker, *The Law of Receivers of Corporations* (New York, 1891); also in the articles "Receivers" by Nathan Newmark and Albert Weimer, and "Receivers (Railroads)" by Thomas P. Howell and Henry F. Stitzell, in the *American and English Encyclopedia of Law* (Northport, 1892).

The decisions of the courts in regard to receiverships are found in the various court reports, which, as well as the briefs of the attorneys, often contain much information in regard to specific receiverships. Such statutes as exist are, of course, in the Revised Statutes or the Statutes-at-Large of the United States, and the similar publications of the several States and territories.



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THE OHIO TAX INQUISITOR LAW

BY

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THE OHIO TAX INQUISITOR LAW.

INTRODUCTION.

It will be understood from the title that this paper does not pretend to discuss the whole problem of taxation in Ohio. That problem does not differ materially from the one which every American state has to face. But Ohio has adopted a method of securing fuller returns of property for taxation, which, it is safe to say, has not had a wide trial elsewhere. It is this rather unique feature of the present tax situation in Ohio that the present paper attempts to describe.

Whatever may be the final conclusion as to the proper dividing line between public and private undertakings, it is generally conceded that the state, being deficient in inventiveness, should attempt no industrial function which cannot be reduced to a routine. The work of listing property for taxation seems to belong so essentially to the state that we are apt to forget that even this duty was, in ancient times, frequently turned over to private enterprise under the system of "farming the revenues," a custom happily given up long ago. Political considerations seem to require that the vital function of taxing should be kept in the hands of the state; besides this work has not been supposed to call for a degree of inventiveness beyond the power of the state to furnish. But the growing difficulty in recent years of properly

assessing and collecting the general property tax, and the uniform failure of public agents to secure full returns of personal property, has led the state of Ohio to supplement her regular taxing machinery by calling private enterprise and ingenuity to its help. In some respects it is a reversion to the primitive methods of tax farming.

I.

THE LISTING OF PERSONAL PROPERTY IN OHIO.

It should be remembered that the constitution of Ohio leaves comparatively little discretion to the legislature on the subject of taxation. "The Constitutional Convention of 1851," to use the expression of one of the leading public men of the state, "not only adopted a constitution, but passed a great many laws besides, which we are bound to treat as part of the constitution." This statement is justified by the provision relating to taxation, which distinctly declares that all forms of property including money, credits, bonds, stocks, shall be taxed at a uniform rate. In reading the record of the debates of that convention one receives the impression that the chief care of its members, so far as taxation was concerned, was to so frame the section relating to that subject that no future legislature could possibly make any distinction between different kinds of property. The result is that the general property tax is fixed upon the state until sufficient interest can be aroused to secure an amendment to the constitution. Experience with constitutional amendments in Ohio does not afford much encouragement in that direction. It remains for the people to make the most of the present situation and to do what they can to make the general property tax work.

Early in the convention resolutions were introduced

instructing the committee on finance and taxation "to consider the expediency of inserting a clause in the constitution equalizing taxation and making it proportional to the actual value of the whole estate of the individual taxed, regardless of all distinction between real and personal estate.¹ A long and spirited discussion took place over the question of inserting a clause compelling the taxation of state and national bonds.²

The zeal thus displayed is easily accounted for. Under the old constitution a great many abuses had grown up, chiefly through the granting of charters to corporations exempting them from taxation. A large number of special privileges had also been granted, so that the burdens of taxation were very unequally and unjustly distributed. As a result of the effort to correct these abuses the following provision was adopted :

§ 2. Laws shall be passed taxing by a uniform rule all moneys, credits, investments, and bonds, stocks, joint stock companies, or otherwise ; and also all real and personal property, according to its true value in money ; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value two hundred dollars for each individual, may, by the general laws, be exempted from taxation ; but all such laws shall be subject to alteration or repeal ; and the value of all property so exempted, shall from time to time be ascertained and published as may be directed by law.

§ 3. The general assembly shall provide by law for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects, or dues, of every description (without deduction) of all banks now existing, or hereafter created, and of all bankers, so that all property employed in banking shall always bear a burden equal to that imposed on the property of individuals.³

¹ Debates, 1 : 298.

² Debates, 2 : 35-116.

³ Constitution of 1851, Article XII.

No one can say after studying the history of taxation in Ohio, that there has not been an honest effort to carry out the spirit of the constitution. Neither can it be said that the general property tax has not had a fair trial. The attempts to secure full returns of all taxable property have been, so far as legislation is concerned, most thoroughgoing. It is doubtful if any law has had a fairer trial.

This zeal in behalf of the general property tax extends back beyond the constitution of 1851. As least as early as 1846 we find the outlines of the present inquisitorial system embodied in law. An act passed March 2 of that year¹ provided that every person required to list property should make out, verify by his oath, and deliver to the assessor, a list of all his personal property of every form. It further provided (section 31) that the assessor should administer the oath to the person listing, and in case the person refused to swear to the truth of his statement the assessor should proceed to find out from other sources the amount of property that should be listed. In order to accomplish this he was authorized to examine under oath any person whom he might suppose to know of such property. In case such person refused to testify, the assessor was empowered (section 33) to apply to any justice of the peace, who should summon the witness and compel him to testify on pain of the ordinary penalties for contempt. In addition, the county auditor was obliged to add fifty per cent. to the amount so ascertained by the assessor.

¹ Laws of Ohio, 44 : 85-110.

And if the auditor had reason for believing that the amount returned by the assessor was below the true value, he was authorized to institute such further examination as he should deem necessary, and was vested with the same authority to summon witnesses and compel testimony as was conferred upon the assessor.

On March 25, 1851, fifteen days after the adoption of the present constitution, another general tax law was passed,¹ embodying the essential features of the act of 1846 as to the listing of personal property. It increased the number of items concerning which separate statements should be made, but it did not grant the assessor or the auditor power to bring a witness before a justice of the peace; though it again conferred on them the power to summon witnesses and administer the oath. In case the assessor could not find out how much property a man had, he was to list him for such an amount as he deemed proper, to which the auditor was obliged to add fifty per cent.

Another act passed April 5, 1859,² covering the whole subject of taxation, left the matter of listing personal property essentially as it was, except that the powers of the auditor were made slightly more definite. He was authorized in case he had reason for believing that an incorrect return had been made, "to issue compulsory process and require the attendance of any person or persons whom he might suppose to have knowledge of the articles or value of the personal property, moneys, or credits, investments in bonds, stocks, joint stock com-

¹ Laws of Ohio, 49: 58-84.

² Laws of Ohio, 56: 175-218.

panies, or otherwise, and to examine such person or persons on oath or affirmation in relation to such statement or return.

This was still somewhat less inquisitorial than the act of 1846, since neither the auditor nor the assessor could compel testimony before a regularly constituted court of law. Two years later, however, this act was supplemented by another, section 2 of which clothes the auditor with ample powers. It is short and somewhat important, and, being still in force, is given here complete :

SEC. 1. *Be it enacted by the General Assembly of the State of Ohio,* That if any person whose duty it shall be to make a return or list of property for taxation under the provisions of an act for the assessment and taxation of all property in this state, and for levying taxes thereon, according to its true value in money, passed April 5, 1859, shall make a false return, or shall evade making a return, it shall be the duty of the county auditor to ascertain the true amount of taxable property, moneys, credits, and effects that such person ought to have returned or listed, in the manner prescribed in the thirty-fourth section of said act, and to add thereto fifty per centum on the amount so ascertained; and the amount so ascertained, with the said fifty per centum, shall be entered on the duplicate for taxation.

SEC. 2. Where any person summoned to appear before the county auditor and give testimony under the provisions of the thirty-fourth section of said act, shall neglect or refuse to appear, or shall neglect or refuse to answer any question that may be put to him by the auditor touching the matter under examination, the auditor shall apply to the probate judge of the county to issue a subpoena for the appearance of such person before him; and on the application of the county auditor, it shall be the duty of the probate judge to issue a subpoena for the appearance of such person forthwith before him to give testimony; and if any person so summoned shall fail to appear, or appearing shall refuse to testify, he shall be subject to like proceedings and penalties for contempt as witnesses in actions pending in the probate court.

SEC. 3. That sec. 6 of said act be amended so as to read as follows: § 6. Each person required by this act to list property, shall make out and

deliver to the assessor, when required, or within ten days thereafter, a statement verified by his oath or affirmation, of all personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, in his possession or under the control of such person, on the day next preceding the second Monday of April in the year in which the assessment shall be made, and which by the provisions of this act he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent, or factor.

SEC. 4. Said original sec. 6 is hereby repealed and this act shall take effect on its passage.¹

An act dated April 16, 1867,² extended the powers of the county auditor so as to enable him to compel the president and cashier of any bank located in his county to make under oath a full statement of the names and residence of the stockholders with the number of shares held by each and the actual value in money of such shares, together with a description of the real estate owned by the bank. The shareholders were to be taxed on the value of their shares at the same rate as on other personal property, and it was made unlawful for shares to be transferred till the taxes were paid. The auditor and the probate judge were given the same powers over testimony in these cases as was provided in other cases by the act of 1861.

Again in 1878³ the laws of the state relating to taxation were revised and consolidated. The provisions of the act of 1861 relating to the listing of personal property were repeated, and the same inquisitorial powers were conferred upon the county auditor. But it was

¹ Passed March 29, 1861. Laws of Ohio, 58 : 47.

² Laws of Ohio, 64 : 204.

³ Laws of Ohio, 75 : 436.

further provided in the following words that back taxes might be collected in cases of fraudulent omissions :

And the inquiry and correction provided for in this and the next section, may go as far back as the same can be traced, not exceeding the four years next prior to the year in which the inquiries and corrections are made, but as to former years no penalty shall be added and only simple taxes shall be claimed.

By an act passed April 14, 1886,¹ this was so amended as to provide that in case of evasion or false return the auditor

shall for each year ascertain as near as practicable the true amount of personal property, moneys, credits, and investments, that such person ought to have returned or listed, for not exceeding the five years next prior to the year in which the inquiries and corrections provided for in this and the next section are made.

The fifty per cent. penalty was to be added for each of the six years.

The constitutionality of this act was tested before the supreme court² on the ground of the retroactive character of the remedy. It was held that the law was valid in so far as it provided for the collection of back taxes, but that the fifty per cent. penalty could not be imposed for years prior to 1886, the date of the passage of the act.

Since 1886 the powers and duties of the assessors and county auditors, so far as they relate to the listing of personal property, may be summed up as follows :

1. The assessor shall require of every person of sound mind a complete list of all personal property of every description within his possession or under his control.

¹ Laws of Ohio, 83 : 82.

² Gager, Treas., *v.* A. W. Prout, *et al.*, O. St., 48 : 89.

2. The assessor may require this statement to be verified by oath.

3. "Such statement shall truly and distinctly set forth, first, the number of horses, and the value thereof; second, the number of neat cattle and the value thereof; third, the number of mules and asses and the value thereof; fourth, the number of sheep and the value thereof; fifth, the number of hogs and the value thereof; sixth, the number of pleasure carriages and the value thereof; seventh, the total value of all articles of personal property not included in the preceding or succeeding classes; eighth, the number of watches and the value thereof; ninth, the number of pianofortes and organs and the value thereof; tenth, the average value of the goods and merchandise which such person is required to list as a merchant; eleventh, the value of the property which such person is required to list as banker, broker, or stockjobber; twelfth, the average value of the materials and manufactured articles which such person is required to list as a manufacturer; thirteenth, moneys on hand or on deposit subject to order; fourteenth, the amount of credits as hereinbefore defined; fifteenth, the amount of all moneys invested in bonds, stocks, joint stock companies, annuities, or otherwise; sixteenth, the monthly average amount or value, for the time he held or controlled the same within the preceding year, of all moneys, credits, or other effects within that time invested in or converted into bonds or other securities of the United States, or of this state, not taxed, to the extent he may hold or control such bonds or securities on

said day preceding the second Monday of April, and any indebtedness created in the purchase of such bonds or securities shall not be deducted from the credits under the fourteenth item of this section."

4. In case any person required to list shall refuse, or shall refuse to take oath to the correctness of the returns, the assessor shall take such other means as are within his power to find out how much ought to have been listed, and the auditor shall add fifty per cent. as a penalty to the amount so ascertained.

5. If the auditor has reason to believe that the return of any person is incorrect, he can summon such person and compel him to answer under oath any question relating to the subject.

6. The auditor can also summon any other person, including the cashier of any bank, whom he may suppose to have knowledge of such property, and compel him to testify under oath.

7. In case any such person shall refuse to testify, the judge of the probate court shall summon him, at the request of the auditor, and compel him to testify under pain of the ordinary penalties for contempt.

8. These investigations of the auditor may include the five years next prior to the year in which the inquiries are made, and a penalty of fifty per cent. shall be added to the value of any property improperly omitted during any of the five years.

II.

THE PRESENT TAX INQUISITOR SYSTEM.

In spite of the powers entrusted to the county auditors, the county commissioners of the city counties began long ago to face the fact that a great deal of personal property was escaping taxation. Accordingly still more vigorous measures were taken to secure a full return. The county commissioners of Hamilton County had, before 1880, employed private individuals to detect improperly omitted property,¹ paying them a commission on the amount of taxes collected through information furnished by them. In the absence of some state law authorizing such a contract, the whole expense had to be borne by the county, though the state shared in the additional taxes thus secured. To correct this difficulty and compel the state to share in the expense, a rather peculiar act was passed April 14, 1880,² the first section of which reads as follows :

Be it enacted by the General Assembly of the State of Ohio that whenever the board of county commissioners of any county in this state, containing a city of the first grade of the first class, shall have employed any person or persons to ascertain and furnish to the county auditor the facts and evidence necessary to authorize him to subject to taxation any property improperly omitted therefrom, no payment for such services shall be made to such person or persons, except in accordance with the terms of agreement between the county commissioners and such person or persons, and such payment shall be made to such person or persons only out of money actually paid into

¹ See State *ex. rel. v. Capper*, 39 O. St., 214.

² Laws of Ohio, 77 : 204.

the county treasury as taxes on such omitted property, and such compensation shall be apportioned ratably by the county auditor among all the funds entitled to share in the distribution of such taxes, including the state itself, as well as the counties, townships, cities, villages, school districts, and other organizations entitled thereto, provided, however, that such employment shall only be authorized as to any omissions occurring previous to the passage of this act.

Under authority of this act, the auditor and the treasurer of Hamilton County in their settlement with the state auditor, deducted from the state's share the amount which had been previously expended in commissions allowed to private parties for the detection of improper omissions from the tax duplicate. The state auditor asked for a mandamus to compel the county auditor to correct the alleged error. The court decided¹ that the act above cited was constitutional, that it legalized the contract, and authorized the deduction which the county auditor had made.

In 1885² an act was passed extending the authority granted under the act of 1880, to all counties containing a city of the first class or of the first grade of the second class. This enabled the counties of Hamilton, Cuyahoga, Lucas and Franklin, containing the four largest cities in the state, (Cincinnati, Cleveland, Toledo and Columbus) to employ tax inquisitors and to compel the state to share in the expense.

Again in 1888, the power to employ tax inquisitors was extended to all counties in the state. The act³ read as follows :

¹ State *ex. rel. v. Cappeller*, O. St. 39 : 214.

² Laws of Ohio, 82 : 152

³ Laws of Ohio, 39 : 170.

An act to secure a fuller and better return of property for taxation, and to prevent omissions of property from the tax duplicate :

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, that the county commissioners, county auditor, and county treasurer, or a majority of said officers in any county, when they have reasons to believe that there has not been a full return of property within the county for taxation, shall have power to employ any person to make inquiry and furnish the county auditor the facts as to any omission of property for taxation, and the evidence necessary to authorize him to subject to taxation any property improperly omitted from the tax duplicate ; no payment to be made for such services, except in accordance with the terms of agreement between the officers or a majority of them and such person, and such payment shall be made only out of money actually paid into the county treasury as taxes on such omitted property, and such compensation shall not exceed twenty per cent. of the amount of such taxes on the returns, omitted moneys, credits, investments and bonds, stocks, joint stock annuities, or other valuable interest held by a resident of this state or by others for him ; and all such allowances shall be apportioned ratably by the county auditor among all the funds entitled to share in the distribution of such taxes.

Section 2 places a penalty upon any assessor who shall wilfully omit to return any property. Section 3 provides for the bond of the inquisitor, and section 4 provides that the act of 1885 should remain in force, the apparent purpose being to permit the four largest cities to pay twenty-five per cent. commission instead of twenty per cent., as provided in this act.

Such then are the laws under which the so-called tax inquisitor system of Ohio has grown up. In its practical workings it amounts to just this :¹ The county commissioners, county auditor, and the county treasurer, or a majority of them in any county, may make a contract for a term of years with some private individual or

¹ A very good description of the system, together with a careful summary of the arguments against it, is found in an article on "The Tax Inquisitor System in Ohio," by E. A. Angel, *Yale Review*, 5 : 350.

firm, to act as tax inquisitor for the county. He is usually someone living outside the county, away from local political influences. In many cases the same individual or firm has the contract for several counties. He proceeds to organize a detective bureau on a small scale, to examine the records of the different counties of this and neighboring states, to find who are the holders of mortgages which are improperly omitted from the tax duplicate. Information is also sought, and sometimes obtained, as to the moneys on deposit in banks and stocks in corporations outside of the state owned by Ohio citizens and omitted from the tax duplicate. When a piece of omitted property is found, which is subject to taxation in the county in question, the inquisitor lays the information before the county auditor, whose duty it then becomes to summon the owner before him to show cause why such property should not be placed upon the tax duplicate and back taxes collected with the fifty per cent. penalty. When the owner appears, the inquisitor acts as prosecutor and lays the evidence before the auditor, who decides the case. The inquisitor also asks questions, or suggests questions which are asked by the auditor, and the witness is bound to answer under oath. In case the person so summoned refuses to appear, or appearing, refuses to testify, the probate judge shall, at the request of the auditor, summon such person and compel him to answer under oath such questions relating to his property as are put to him by the auditor and the inquisitor. But even in this case the auditor is the one who decides whether or not anything is to be added to the as-

essment of the person in question; though, of course, such person retains the ordinary legal remedies against unjust assessment.

Since the inquisitor receives no compensation except a percentage of the amount actually paid into the treasury upon information furnished by him, he has every inducement to prosecute his work with vigor.¹ Since the county auditor also receives a commission of five per cent. on all taxes so collected, it might be expected that he would also have inducement enough in the same direction. But herein lies a weakness of the system. The auditor's position is a political one, and it sometimes happens that he is unwilling to incur the illwill of influential citizens by acting promptly and energetically upon the suggestions of the inquisitor. The writer is informed on good authority that in some counties the system has broken down through the unwillingness of the auditors to exercise the powers conferred upon them. This fact is perhaps a sufficient answer to the argument that the county auditor already has sufficient power to find all the property omitted from taxa-

¹ So far as the writer is informed, the two states which approximate nearest to this system are Indiana and Kentucky. In Indiana the county attorney, instead of the auditor, is charged with the duty of detecting fraudulent tax returns and prosecuting them. In addition, in some counties, the commissioners have been in the habit of employing private individuals to ferret out such frauds, but so far as the writer knows, there is no state law authorizing such contracts, and they are of doubtful constitutionality. In Kentucky the state auditor may appoint an agent, called a revenue agent, in each county to institute proceedings for placing upon the tax list property which has been omitted. Kentucky Statutes, Barber and Carrol, 1894, §§ 4241, 4258.

tion in his county, and that, therefore, the work of the tax inquisitor is unnecessary.

As might have been expected, this system had not long been in operation before its constitutionality was tested in the courts. Reference has already been made (page 179) to the case of the State *ex. rel. v. Cappeller*, Auditor of Hamilton County, wherein the legality of the contract between the county commissioners and the tax inquisitor was upheld. Later it was held¹ that the inquisitor was entitled to his commission on all taxes paid into the treasury upon information furnished by him, as well when this information related to property placed upon the duplicate at too low a valuation, as when it related to property omitted altogether. Finally, in the case of the State *ex. rel. v. Crites*,² the law was not only upheld, but it was decided that the inquisitor might compel the auditor to act upon information furnished. This case is so interesting and throws so much light upon the whole inquisitor system, that a somewhat detailed account of it is given.

Mr. Henry W. Morgenthaler³ had a contract as tax

¹ State *ex. rel.* George Deckebach *v.* John Hagerty, Auditor of Hamilton County, 5 C. C. p. 325.

² 48 O. St. 142.

³ "It is said that each of these several acts of 1880, 1885, and 1888, were passed through the active efforts of two brothers named Henry W. Morgenthaler and C. E. Morgenthaler. One of these gentlemen, at least, had been employed in the auditor's office in Hamilton County at Cincinnati. As we shall see hereafter, these two gentlemen have been the chief beneficiaries of the scheme embodied in these several acts." Mr. E. A. Angel on "The Tax Inquisitor System in Ohio," *Yale Review*, 5 : 354. The system is sometimes called the Morgenthaler law. There is a very general supposition that the Messrs.

inquisitor in Allen County, under which he was to receive twenty per cent. of all taxes collected through information furnished by him. Having found evidence which led him to believe that one Calvin S. Brice had, for several years past, neglected to return for taxation property amounting approximately to \$2,000,000 in Allen County, he laid the matter before the auditor, who summoned said Calvin S. Brice before him to show cause why such property should not be placed upon the duplicate for taxation. "Which said notice was duly served by the relator in said city of New York upon said Brice, who paid no attention thereto but to announce that he would have the law repealed." Brice failing to appear, the matter was continued from time to time at the suggestion of his attorneys. Meanwhile, the auditor was enjoined by the court of common pleas from acting further upon the contract with Morgenthaler. Finally, the auditor refusing to act in the matter of Brice's back taxes, Morgenthaler petitioned in the circuit court of Allen County for a peremptory mandamus compelling the auditor to enter upon the tax duplicate, in the name of Calvin S. Brice, the true amount of said omitted property, as nearly as it could be ascertained. The circuit court denied the petition, but the supreme court reversed the decision and granted the petition. The auditor, being under a peremptory mandamus to examine the evidence and place upon the duplicate such omitted property, as nearly as

Morgenthaler have the contracts in most of the counties of the state. This, however, is untrue, though they are working the principal city counties.

it could be ascertained, proceeded to comply with it to his own satisfaction. But what was satisfactory to him did not satisfy Mr. Morgenthaler. Accordingly, in the same term of court¹ he reopened proceedings in a motion to have the auditor attached for contempt. He complained that the auditor had not proceeded upon the facts and evidence submitted; that he took the testimony of Mr. Brice privately; that he did not inquire of said Brice, while he was a witness, into all matters touching his taxable property; that he had not given to the county treasurer a certificate for the collection of the added taxes as required by law.

The auditor reported that he had at once proceeded to the performance of the duty commanded; that he had examined the papers, testimony, etc., and ascertained, as near as practicable, the amount of personal property, moneys, credits, etc., that said Brice ought to have returned, and he had added the fifty per cent. penalty as required by law. This investigation had placed upon the duplicate a very much smaller amount than Mr. Morgenthaler claimed should have been added in the light of the evidence submitted; but into this question, it was not the province of the court in this case to inquire. Moreover, the auditor was not compelled, by the mandamus under which the contempt proceedings were being heard, to examine into the particular evidence submitted, but his discretion was left untrammelled, "not only as to the testimony he should consider, but also to the conclusions he might reach." In the opinion

¹ O. St. 48: 460.

of the court, "an inspection of the exhibit discloses that Mr. Brice was permitted to proceed in his own way, and make such statements and explanations as he saw proper, and was subject to no cross-examination whatever, a method of inquiry well adapted to conceal and cover up, rather than lay bare the circumstances of any given transaction." But, while the proceedings were not entirely satisfactory, it was held that there was not sufficient evidence to sustain the charge of contempt.

The final result of the litigation is that though the constitutionality of the law has been vindicated and the rights of the tax inquisitor upheld, yet, with an auditor opposed to him, his power is nullified and the law is practically a dead letter.

In many of the discussions of the inquisitor system in Ohio, it seems to be assumed that the inquisitorial features are all involved in the appointment of private individuals to ferret out omitted property. From the foregoing account it will appear that the really drastic features of the system are older than the law authorizing the appointment of tax inquisitors. For example, under the act of 1861¹ the auditor is authorized to summon anyone whom he may suppose to have knowledge of the property of one who is suspected of having evaded his taxes, and to compel him to divulge his information. In the case of the First National Bank of Youngstown, Ohio, appellant, *vs.* the Auditor of Mahoning County,² the Supreme Court of the United States decided that even the cashier of a bank may be summoned and com-

¹ *Ante*, p. 173.

² 106 U. S., 523.

pelled to testify and to bring his books showing the deposits of the bank. The following is taken from the opinion of the Court :

The auditor of Mahoning County, in the exercise of his power to charge persons on the tax duplicate with the proper amount of taxes, called on the cashier of the First National Bank of Youngstown to appear and testify, and because he could not testify without, to bring with him the books of the bank showing its deposits. Thereupon the bank filed a bill in equity, to enjoin the auditor, alleging for cause that such a proceeding on his part would unlawfully expose its business affairs, lessen public confidence in it as a depository of moneys, diminish its deposits, and greatly impair the value of its franchises. The circuit court dismissed the bill and the bank appealed. A motion is now made to dismiss the appeal for want of jurisdiction, because the value of the matter in dispute does not exceed five thousand dollars.

The present suit is not for money, nor for anything the value of which can be measured by money. The bank has no interest in the taxes to be placed on the tax duplicates. There is no property in dispute between the auditor and the bank. If the cashier is compelled to testify and to produce the books for the purposes required, the damages, if any, resulting to the bank, would be, in the highest degree, remote and speculative. Certainly no suit for even nominal damages could be sustained against the auditor on account of what he had done. All the cashier is required to do, is to give testimony in a proceeding instituted under the authority of law, by the auditor, to perfect the tax lists of the county. It is supposed the books of the bank contain evidence pertinent to this inquiry, and appropriate measures are taken to have them produced for examination. The case is in no respect different in principle from what it would be if the evidence was called for in an ordinary suit in a court of justice between individuals.

Among the arguments in favor of an inheritance tax, we frequently find the statement that in all probability the property passing by inheritance has escaped taxation for years previous, and to tax it as an inheritance is simply to collect back taxes which ought to have been paid before. Without discussing the validity of this ar-

gument as a general principle, it is worthy of remark that it is utterly inapplicable to the state of Ohio under the present system of listing personal property. For, under the act of 1886,¹ the auditor is empowered to collect evaded back taxes for the five years preceding the year when such evasion is discovered. This has been interpreted to mean that such taxes may be collected from an estate just as any other debt, and the executors are compelled to pay them. The proceedings of the probate courts were formerly watched by the tax inquisitors, and when an estate upon which false returns had been made for taxation was admitted to probate, the valuations were submitted to the auditor as evidence, and he thereupon proceeded to collect the back taxes. But by an act passed April 20th, 1893,² it was made the duty of the probate judge of each county to deliver to the auditor a statement showing the appraised valuation of each class of property in each inventory which the executors or administrators of all estates passing by inheritance are required to make out. If it should appear from these statements that false returns for taxation had been made by the deceased owner, the auditor should proceed to collect the back taxes for the five years preceding the year in which the inquiry is made, and to add fifty per cent. as a penalty. Such claims take precedence over others, and the administrators are held responsible for their payment. In these cases no allowance is to be made for the tax inquisitor. When it is

¹ *Ante*, p. 175.

² Laws of Ohio, 90 : 217.

remembered that property improperly omitted from the tax duplicate may then be made to pay from ten to twenty per cent.,¹ it will be seen that this acts at least as effectively as an inheritance tax could do in the way of balancing evaded taxes.

¹ Suppose the property to be held in a community where the tax rate is twenty-five mills on the dollar, or two and one-half per cent. This for five years would equal twelve and one-half per cent., and with the fifty per cent. added as a penalty, would amount to eighteen and three-fourths per cent.

III.

THE RESULTS OF THE SYSTEM.

The all-important question concerning this system of listing personal property is, Does it secure reasonably full returns? If it can be said that the system has accomplished that end, almost any theoretical or sentimental objection against it may be overlooked. On the other hand, it would seem that if it has been unsuccessful, it is not worth while for any state to attempt to secure a full and fair assessment of personal property. The following table, taken from the report of the auditor of the state for 1897, shows a gradual increase in the assessed valuation of personal property since 1880, but not enough to balance the increase in population or the supposed increase in wealth. It may be noticed also that prior to 1880 there had been a gradual decrease for several years. But owing to the inflated currency of that period, such valuations do not throw much light on the question.

TABLE I.

ASSESSED VALUATION OF PERSONAL PROPERTY IN OHIO, 1870-1897.
(UNIT EQUALS \$1,000,000.)

1870-----459.7	1880-----456.2	1890-----543.8
1871-----476.5	1881-----485.7	1891-----556.2
1872-----494.2	1882-----518.2	1892-----563.9
1873-----525.5	1883-----542.2	1893-----568.6
1874-----528.1	1884-----528.3	1894-----542.3
1875-----535.7	1885-----509.9	1895-----527.6
1876-----520.7	1886-----515.6	1896-----514.0
1877-----490.2	1887-----520.2	1897-----511.1
1878-----461.5	1888-----532.0	
1879-----443.0	1889-----540.6	

But since evasions are most frequent in intangible forms of personal property, the real test of the efficiency of the system will be the way it has effected the returns of that kind of property. Accordingly in the following table, compiled from the annual reports of the auditor of the state, the five forms of property most subject to evasion have been selected and the amount set down which has been returned for the whole state during each year from 1881 to 1896.

TABLE II.

ASSESSED VALUATION OF FIVE FORMS OF PERSONAL PROPERTY IN OHIO, 1881-1896. (UNIT EQUALS \$1,000,000.)

Year	Merchants' stock.	Manufacturers' stock.	Value of all money in possession or on deposit subject to order.	Value of all credits after deducting all bona fide debts.	All moneys invested in bonds, stocks, joint stock companies or otherwise.
1881-	44.5	16.1	40.6	101.1	8.6
1882-	47.8	17.0	46.1	104.8	8.3
1883-	48.2	17.6	42.8	107.5	9.6
1884-	47.1	17.8	38.1	109.6	8.0
1885-	45.4	17.1	34.3	107.6	8.5
1886-	44.7	16.0	34.3	108.0	8.8
1887-	43.8	16.0	35.1	106.2	7.8
1888-	44.0	16.1	33.8	111.9	7.4
1889-	42.8	16.8	35.0	114.0	8.5
1890-	41.9	16.3	36.4	111.4	8.0
1891-	42.7	17.5	37.9	113.9	10.7
1892-	42.1	17.9	38.4	113.8	10.6
1893-	43.1	17.5	41.6	111.2	9.7
1894-	40.4	16.6	35.4	110.9	6.8
1895-	50.3	16.5	36.9	106.4	7.8
1896-	38.7	15.4	34.7	102.8	7.3

It will be noted that as regards these forms of property the only effect which can reasonably be

traced to the working of the inquisitor system, is the slight increase after 1888, the year when the law was made applicable to all the counties of the state, in the column headed "Value of all Credits after deducting *bona fide* Debts." But this increase is only temporary, as the amount begins to fall off again after 1892. Whether the increase from 1888 to 1892 was due to the unusually good times of that period, and the subsequent falling off to the hard times following the panic of 1893, would be difficult to say; but it seems somewhat improbable from the fact that the other columns fail to show a corresponding tendency. Such a conclusion is rendered still more improbable, and greater weight attaches to the suggestion that the tax inquisitors had something to do with it, from the following facts.

First, it is in the field of credits that the inquisitors do most of their work.

Second, according to the auditor's reports, there was added to the tax duplicate through information furnished by the inquisitors during the years 1893-96,¹ the following amounts, which must have influenced somewhat the total assessments of intangible property.

1893 -----	\$31,915,528
1894 -----	18,357,913
1895 -----	22,024,238
1896 -----	11,968,965

But it must be confessed that even this is not a very large amount relatively, and probably represents only a small proportion of the intangible property actually omitted from the tax duplicate. During these same

¹ Statistics prior to 1893 are not available.

years the number of counties¹ employing a tax inquisitor was as follows :

1893-----	55
1894-----	51
1895-----	49
1896-----	45

This list, however, includes the principal city counties of the state, where it is supposed that the tax evasions are most common. It will be noted that the number of counties employing tax inquisitors has fallen off since 1893, and that there is a similar falling off in the amounts added to the duplicate by the inquisitors. Perhaps this has something to do with the decline in the amount of credits on the duplicate since that time.

It is apparent that the foregoing figures are not conclusive one way or the other, for while there does not appear to be any marked increase in the assessed valuation of personal property, it is conceivable that the inquisitor system may have prevented a considerable decrease. The general tendency throughout the country is for the assessed valuation of personal property to decrease at a pretty rapid rate, especially in our larger cities. The table on the following page contains the figures for the counties containing Cleveland and Cincinnati, the two principle cities of the state, where the inquisitor system has had the longest trial.

It appears that though Cincinnati is the home of the inquisitor system, she has in spite of that system fol-

¹ There are 88 counties in the state. These figures are gathered from annual reports of the secretary of state.

TABLE III.

ASSESSED VALUATION OF PERSONAL PROPERTY FOR TWO COUNTIES,
1880-1897. (UNIT EQUALS \$1,000,000.)

Cuyahoga County.		Hamilton County.	
1880-----	25.8	1880-----	46.2
1881-----	26.0	1881-----	50.4
1882-----	27.7	1882-----	54.4
1883-----	28.8	1883-----	56.3
1884-----	28.8	1884-----	54.1
1885-----	29.6	1885-----	51.6
1886-----	31.2	1886-----	51.4
1887-----	32.3	1887-----	53.1
1888-----	33.6	1888-----	51.5
1889-----	32.9	1889-----	49.9
1890-----	34.6	1890-----	50.4
1891-----	36.5	1891-----	55.1
1892-----	37.6	1892-----	54.8
1893-----	38.8	1893-----	53.9
1894-----	38.5	1894-----	50.7
1895-----	37.8	1895-----	48.9
1896-----	39.9	1896-----	47.1
1897-----	41.5	1897-----	44.9

lowed the example of other large cities. In Cleveland there has been a pretty constant increase, due mainly to the city's more rapid growth, and partly, perhaps, to the greater efficiency of the work of the inquisitors. A glance at Table V (pp. 206-10) will show that for recent years, at least, the amount of property placed on the duplicate by the inquisitors has been much greater in Cleveland than in Cincinnati.

Table IV, compiled from the last three United States census reports on taxation, shows how the two principal city counties of Ohio, Cuyahoga and Hamilton, compare with the counties containing the twenty-four other largest cities in the United States. The first column

TABLE IV.

PERSONAL AND REAL PROPERTY (ASSESSED VALUATION) AND RATIO BETWEEN THEM IN AMERICAN URBAN COUNTIES. (UNIT EQUALS \$1,000,000.)

Counties Containing the 26 Largest Cities in Order of Size, (Washing- ton, D. C., omitted).	CENSUS OF 1870.			CENSUS OF 1880.			CENSUS OF 1890.			Ratio between Assessed Val- uation and True Value of Property. Census of 1890.
	Personal Property.	Real Property.	Ratio between Personal and Real.	Personal Property.	Real Property.	Ratio between Personal and Real.	Personal Property.	Real Property.	Ratio between Personal and Real.	
New York Co., N. Y.	281.1	647.1	1 : 3.0	175.9	918.1	1 : 5.2	220.4	1398.3	1 : 6.3	1 : 1.6
Cook County, Ill.	21.6	64.1	1 : 3.0	33.8	115.2	1 : 3.4	54.0	186.2	1 : 3.5	1 : 7.8
Philadelphia Co., Pa.	44.7	470.9	1 : 10.5	52.6	529.7	1 : 10.0	288.8	685.5	1 : 2.4	1 : 1.4
Kings County, N. Y.	19.3	174.8	1 : 9.1	13.3	231.3	1 : 17.5	14.5	445.3	1 : 30.8	1 : 1.4
St. Louis County, Mo.	31.6	155.8	1 : 4.9	32.0	150.6	1 : 4.7	40.1	230.4	1 : 5.7	1 : 1.6
Suffolk County, Mass.	220.4	377.2	1 : 1.7	204.2	454.0	1 : 2.2	205.0	646.4	1 : 3.1	1 : 1.1
Baltimore County, Md.	79.2	158.6	1 : 2.0	15.1	42.5	1 : 2.8	78.7	327.5	1 : 4.1	1 : 1.3
San Francisco Co., Cal.	29.6	72.5	1 : 2.4	54.2	190.4	1 : 3.5	66.2	235.4	1 : 3.5	1 : 1.3
Hamilton County, O.	67.7	98.0	1 : 1.4	49.3	158.0	1 : 3.2	60.4	172.0	1 : 3.4	1 : 1.6
Cuyahoga County, O.	24.2	29.2	1 : 1.2	23.0	65.4	1 : 2.8	34.6	87.2	1 : 2.5	1 : 2.0
Erie County, N. Y.	11.4	41.5	1 : 3.6	9.5	109.0	1 : 11.5	12.8	183.2	1 : 14.3	1 : 1.4
Orleans County, La.	36.0	110.7	1 : 3.0	20.4	71.4	1 : 3.5	44.3	87.7	1 : 2.0	1 : 1.1
Allegheny County, Pa.	12.4	33.8	1 : 2.7	3.5	167.2	1 : 49.1	45.8	254.5	1 : 5.5	1 : 2.3
Wayne County, Mich.	7.1	20.2	1 : 2.8	21.4	78.8	1 : 3.6	41.6	127.6	1 : 3.0	1 : 1.2
Milwaukee Co., Wis.	14.6	36.7	1 : 2.5	14.2	39.6	1 : 2.8	19.9	85.6	1 : 4.3	1 : 1.6
Essex County, N. J.	27.5	76.9	1 : 2.8	20.7	86.7	1 : 4.2	28.2	119.0	1 : 4.2	1 : 1.5
Hennepin Co., Minn.	1.3	5.2	1 : 4.0	7.9	30.3	1 : 3.9	19.6	130.3	1 : 6.6	1 : 1.5
Hudson County, N. J.	12.2	73.0	1 : 6.0	6.7	83.7	1 : 12.6	9.2	112.6	1 : 12.3	1 : 1.5
Jefferson County, Ky.	16.6	59.8	1 : 3.6	18.2	42.8	1 : 2.3	31.7	73.3	1 : 2.3	1 : 2.0
Douglas County, Neb.	3.4	10.1	1 : 3.0	2.5	5.3	1 : 2.1	1.9	20.2	1 : 4.1	1 : 6.2
Monroe County, N. Y.	2.7	33.1	1 : 12.2	3.3	70.6	1 : 21.3	7.7	123.5	1 : 16.2	1 : 1.2
Ramsey County, Minn.	1.7	7.1	1 : 4.1	7.2	23.3	1 : 3.2	16.6	111.1	1 : 6.7	1 : 1.5
Jackson County, Mo.	2.7	13.4	1 : 5.1	8.9	12.5	1 : 2.5	29.0	67.0	1 : 2.3	1 : 1.4
Providence Co., R. I.	5.7	91.8	1 : 16.0	43.4	135.1	1 : 3.1	54.4	173.5	1 : 3.1	1 : 1.6
Arapahoe Co., Colo.	1.2	3.5	1 : 2.8	4.5	14.1	1 : 1.3	10.2	76.2	1 : 7.4	1 : 3.0
Marion County, Ind.	11.7	29.4	1 : 2.5	14.0	52.8	1 : 3.7	24.9	53.2	1 : 2.1	1 : 1.8

under each year shows the assessed valuation of personalty, the second the assessed valuation of realty, and the third the ratio of personalty to realty—personalty being in each case represented by 1, and realty by the other term of the ratio. The extreme right hand column contains the estimates, according to the Eleventh Census, of the ratio of the assessed valuation of realty to its actual value in these same counties.

From this table there does not appear to be anything to sharply distinguish the city counties of Ohio from those of other states. It will be seen that the two Ohio counties show a fall in the ratio of personalty to realty from 1870 to 1880, and no appreciable change from 1880 to 1890. This probably indicates that the inquisitor law has checked the fall. But we cannot be too sure of this, for the two Pennsylvania counties, Philadelphia and Allegheny, show a considerable fall in the ratio from 1870 to 1880, and a remarkable increase from 1880 to 1890, a fact which indicates a radical change in the methods of assessment during the latter decade. It is true, the New York counties, New York, Kings, Erie, and Monroe, show a continuous and rapid falling off in the ratio of personalty to realty during the whole twenty years; but it is notorious that in New York no real effort is made to carry out the laws respecting the taxation of personal property and these counties furnish no basis of comparison. As compared with Wayne County, Michigan, Milwaukee County, Wisconsin, Hennepin and Ramsey Counties, Minnesota, Douglas County, Nebraska, St. Louis and Jackson Counties, Missouri, the

two Ohio counties make a very favorable showing. This seems like a fair comparison, with the advantages on the side of the above named counties, for they are all farther west, where abuses in taxation are in general less pronounced than in the East ; they are in the same general section, the north central, where social and economic conditions are not very different ; and, finally, they all, with the exception of St. Louis County, Missouri, contain smaller cities than Cleveland and Cincinnati and hence we might expect abuses in taxation to be less than in the two Ohio counties. Marion County, Indiana, and Jefferson County, Kentucky, make a rather more favorable showing ; but the cities which they contain, Indianapolis and Louisville, are smaller than the two Ohio cities, and besides, as stated earlier in this paper, both Indiana and Kentucky have tax inquisitor systems of their own quite as stringent as that of Ohio.

The foregoing table was compiled to see if anything definite could be proved in favor of the Ohio system. It does not appear that anything conclusive can be demonstrated, but the table reveals some facts which are at least suggestive and decidedly favorable to the Ohio tax system, and it is given for what it is worth.

IV.

HOW THE SYSTEM IS REGARDED.

As might have been expected, a law so drastic has called forth a great deal of criticism and opposition. The term "Tax Inquisitor Law," which is now commonly applied to it, was originally given as an opprobrious title. Nevertheless it has a great many defenders, as is shown by the fact that the repeated attempts to secure its repeal have failed. Among the county auditors, even where it is made use of, there is a good deal of divergence of opinion; but replies from seventy out of the eighty-eight county auditors of the state, show a decided majority in its favor. One auditor is of the opinion that if the law were repealed, the returns of personal property in his county would be reduced one-fourth. A large number express themselves very emphatically in its favor, declaring that "there is no more valuable or just law on the statute books;" that "it never did any harm to an honest man;" that "a man who will swear falsely to the assessor about his property is disqualified from giving testimony against the law."

The following letter from an auditor fairly represents the working of the law in one county, with a relatively small population and no large city.

A few facts and figures concerning the tax inquisitor law, and some results in ——— County. 1. Amount placed on the duplicate and

collected, about \$75,000. 2. Amount of moneys and credits returned for taxation :

1886-----	\$1,449,726	1892-----	\$1,447,328
1887-----	1,364,441	1893-----	1,719,675
1888-----	1,391,880	1894-----	1,739,022
1889-----	1,424,748	1895-----	1,699,669
1890-----	1,380,196	1896-----	1,780,411
1891-----	1,427,609	1897-----	1,789,498

See the increase since 1892, when the work was begun. 3. In addition to the increase of moneys and credits returned since 1892, hundreds of thousands of dollars have been invested in new buildings in -----, which have gone upon the duplicate as real estate. 4. None of the additions were made without the consent of the parties, as the papers are on file showing in each case that the parties signed an acknowledgment that they had not made full returns, and that they were indebted to the county in the sums named. Without the inquisitor, very little, if anything, would have been added ; and as long as people evade returning their property for taxation, if no effort is made to secure better returns, it is unfair to those who do make honest returns, for whatever amount of tax is lost through property that is not returned must be assessed upon the property that is returned, thus making the persons who give in the full amount of their property pay an increased amount, or more than their just proportion of taxation. Nothing can be added illegally. If any attempt should be made to do so, the courts will always protect the person in his rights. The person who returns his property for taxation need have no fear of a tax inquisitor. It is those who do not make fair returns that oppose it, for they well know that if there is no tax inquisitor they are in but little danger, and can return their property as suits them best. Some would continue to make honest returns, but others would see their opportunity of escaping, and would return nothing in many cases, or if any, it would be scaled down, as shown by some of the cases cited below.

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CERTAIN CASES, SHOWING THE AMOUNTS FOUND BY THE INQUISITOR
AND THE AMOUNTS RETURNED.

Found.	Returned.	Found.	Returned.	Found.	Returned.
\$12,000-----	\$ 600	3,000-----	Nothing	5,000-----	Nothing
7,000-----	Nothing	3,000-----	"	6,500-----	500
6,800-----	2,000	44,100-----	\$4,500	2,400-----	100
2,000-----	500	11,700-----	300	5,000-----	Nothing
5,000-----	Nothing	10,000-----	500	4,400-----	1,400
2,800-----	Nothing	7,000-----	Nothing	8,070-----	3,000
9,000-----	4,000	5,700-----	"	12,000-----	Nothing
16,000-----	8,000	5,500-----	1,000	2,200-----	"
12,000-----	4,000	6,200-----	Nothing	9,580-----	1,000
27,500-----	9,500	8,500-----	4,100	10,800-----	Nothing
6,400-----	1,200	9,000-----	6,000	4,700-----	"
6,000-----	2,000	2,000-----	Nothing	2,000-----	"
23,000-----	6,000	4,300-----	1,500	8,000-----	"
9,900-----	1,500	4,000-----	1,200	4,500-----	"
5,100-----	1,400	4,100-----	1,300	3,000-----	700
1,900-----	Nothing	5,000-----	1,000	4,300-----	Nothing
1,400-----	"	16,300-----	1,000	2,800-----	100
1,600-----	"	4,500-----	1,500	4,000-----	Nothing
1,000-----	"	6,500-----	800		
5,500-----	2,500	9,000-----	Nothing		
1,500-----	Nothing	7,880-----	1,140		
12,000-----	7,000	14,100-----	5,900		
3,000-----	Nothing	3,300-----	300		
4,100-----	900	4,000-----	1,500		
7,500-----	Nothing	15,440-----	6,000		
10,000-----	5,500	9,500-----	2,500		
5,900-----	500	29,000-----	10,000		

As stated before, it is quite generally the custom to employ a tax inquisitor from outside the county. Of the seventy counties from which replies have been received, fifty-six reported having employed tax inquisitors, and of these, forty-one let the contract to parties outside the home county. The reason is manifest. One rather striking exception is noted in the following extract from a letter written by a county auditor :

Home men as tax inquisitors have been a failure with our county till the present one was appointed. Mr. ——— was appointed six

months ago, and to show you that it requires a man of considerable business qualifications to be a successful tax inquisitor, the present inquisitor spent sixteen years as deputy auditor of this county, and twelve years as bank cashier of one of our banks. Hence he is well qualified, and will turn into the county treasury about \$10,000 the first year of his service. The money, he finds, belongs to people who are amply able to pay their part of the tax. In fact, the majority are clear cases of trying to beat the county.

There are a number of individuals throughout the state who make a business of the work of tax inquisitor. It is quite common for the same individual or firm to have a contract in several counties at once. There is supposed to be a certain amount of co-operation between different inquisitors in the way of furnishing information to one another; and a system of sub-contracts is even hinted at, but such things cannot be proved.

The objections to the system are numerous, but they may all be reduced to four principal ones. First, the system is inquisitorial. That, of course, must be granted. But to condemn the law on that ground is, as one man has expressed it, "very much like giving a dog a bad name and then hanging him for it." Any law is inquisitorial which seriously attempts to assess personal property. One opponent of the law has stated that he wished to have it repealed, so that the New York practice of assessing intangible property at a merely nominal sum would gradually be introduced, without any other change in the tax law of the state, and without necessitating an amendment to the state constitution. But the justice of such a plan would be hard to defend. It would simply mean that all property now subject to taxation would remain so, but only the tangible forms,

which could not be hid, and the intangible property belonging to honest men, who would not hide it, would be taxed. If personal property of all kinds is to be taxed at all, every effort ought in justice to be made to enforce the law impartially. So far no evidence has been made public showing that the inquisitors have wrought injury or hardship on anyone who had really and conscientiously returned his property for taxation. If the enemies of the law would bring to light a few such cases, it would do a great deal toward creating public opinion against it.

In the second place, it is urged that the law is driving capital out of the state. But this is a cry that is heard in every state, and it would be interesting to know where all the capital goes to. Every state in the union, according to this rumor, is losing vast sums. In what place do rich capitalists congregate to escape taxation? The discovery of that cave of Adullam has not been announced. Aside from the improbability of the story, it must be borne in mind that taxes are not usually levied for the fun of it, nor for the purpose of harrassing rich capitalists. They are levied for revenue, and revenue must be had. If one tax is not to be endured, some other tax must be. If certain individuals escape taxation, others must pay more. Now, if the tax collector must deal gently with one class of individuals lest they flee from the state, this same tax collector must deal the more hardly with the other class. But if he attempts to collect more taxes from the second class in order to relieve the first, the members of the second class will also have every inducement to flee. So the state would

probably lose as much as it would gain by dealing tenderly with those whose consciences will permit them to ignore their duties to the state and falsify their tax returns. In the face of this dilemma it would seem about as safe as any way for the tax collector to go ahead and ignore threats of leaving the state, and to do simple justice to all. But from higher considerations the state cannot afford to allow itself to be bullied by threats of this kind.

As evidence of the exodus of capital from the state, it has been seriously pointed out that the value of real estate in Cleveland is much depressed. To say nothing of the insufficiency of the argument *Post hoc ergo propter hoc*, this argument overlooks one very important consideration, namely, the effect of a higher tax on the price of real estate. If the tax inquisitor is driving capital out of Cleveland, it must be because he is subjecting property to taxation which would otherwise escape. But if this property should escape taxation, a higher rate would have to be levied upon other property, principally real estate, in order to get the same revenue. A high tax rate is something which a prospective buyer of real estate will consider. He will pay less for a given piece of property, if it is taxed at a high rate, than he would if it were taxed at a lower rate, other conditions remaining the same. Of course it might be urged that when the capital is driven out of the city it escapes taxation, and, at the same time, ceases to compete with other capital for opportunities for investment. But the exodus of capital must be proved on other grounds than the depression in the value of real estate, which can be accounted for in other ways.

In the third place, it is objected that under the inquisitor law the auditor is the sole judge as to whether the person summoned before him has or has not wrongfully omitted his property from the duplicate. And since he gets five per cent. of the taxes added in this way, he is under temptation to decide in the direction of his commission. This is undoubtedly open to criticism; but it is no part of the inquisitor system itself. The auditor has the same authority in a county where no inquisitor is employed. Besides, if the auditor wrongfully burdens any one with taxes, recourse to the courts is always open. Experience has shown that in spite of their commissions auditors are more prone to error in the way of too great leniency than otherwise.

Finally, it is argued that the results of the work of the inquisitors are too insignificant to pay; that it is not worth while to keep up such a system and create disturbance in business for the meagre sums which they add to the tax duplicate. Here we undoubtedly meet with a valid objection to the system. The results must be disappointing even to the friends of the system. They can only hope that the unseen results may be more important than those which are seen. That is to say, the presence of a tax inquisitor in a county may induce a number of taxpayers to make fuller returns than they otherwise would. Thus the county would gain by additions to its tax duplicate which would not appear in the tables of results of the work of the inquisitor. But upon this point nothing definite can be shown.

Reference to Table V (pp. 206-10) will reveal that in a large number of the counties which employed tax in-

quisitors in 1895, the amount added to the duplicate through their efforts amounted to less than one per cent. of the total personal property. In only thirteen cases does it reach five per cent., and in only seven does it reach ten per cent. If compared with the total taxable property, the percentages would, of course, in every case, be much less.

There are certain minor objections, such as the one that the county commissioners are not required by law to let the contract to the lowest bidder. But manifestly this would be absurd. The lowest bidder might not be in a position to render the county the service required. The man who would turn into the county treasury fifty thousand dollars would be a more profitable servant at a commission of twenty per cent. than one who could only turn in thirty thousand dollars, even though he only asked one per cent. commission. Another minor objection, sentimental in character, is the fear that private individuals will make a profit out of the system.

Among the minor arguments against the system, the statement is often found that it bears more heavily upon the rural than upon the urban counties. A reference to Table V does not reveal any such state of affairs. It will be seen in this table, however, that in the larger city counties the ratio of the valuation of personal property to the total valuation of all property is lower than in the rest of the state. But it does not appear that this is in any sense due to the inquisitor law, for, strange as it may seem, those counties which employ tax inquisitors do not show that personal property forms a larger percentage of all property than those which do not.

TABLE V.

Amount added to the Tax Duplicate through information furnished by the Tax Inquisitors.				Tax Duplicate for 1895.			Amount added to the Duplicate through information furnished by Tax Inquisitors for 1895.	Percentage of Amount so added in total Personal Property. 1895.	Amount added in 1896.
1893.	1894.	Total Property Taxed.	Personal Property.	Per cent of Personal in Total.					
COUNTIES HAVING CITIES OF OVER 100,000.									
Cuyahoga	\$1,658,000	\$5,816,000	\$154,524,580	\$37,840,900	24	.113	\$4,304,640	\$2,097,200	
Hamilton	1,441,350	927,400	238,157,360	48,871,780	20	.079	3,854,962	526,900	
COUNTIES HAVING CITIES OF 50,000 TO 100,000.									
Franklin	180,000	4,250,000	82,228,330	19,495,680	23	.150	2,950,000	1,400,000	
Lucas			53,396,850	12,966,750	24	.0005	7,000		
Montgomery			62,695,810	18,614,340	29				
COUNTIES HAVING CITIES OF 25,000 TO 50,000.									
Clark	5,326,381	141,610	31,291,832	11,119,282	35	.0002	2,400	69,212	
Mahoning		691,425	25,296,960	7,974,080	31	.055	437,940	385,180	
Stark	370,810	147,830	39,862,440	13,257,560	33	.005	73,700	995,835	
Summit	6,462,852	414,160	32,428,710	10,758,140	33				
COUNTIES HAVING CITIES OF 10,000 TO 25,000.									
Allen			19,266,120	6,669,810	34	.006	43,800	86,700	
Butler	68,570		29,954,790	9,319,130	31	.049	214,484		
Columbiana	288,700		23,311,520	8,667,150	37	.270	2,838,844		
Erie	33,149	18,500	14,613,770	5,112,070	34				

TABLE V.—CONTINUED.

	Amount added to the Tax Duplicate through information furnished by the Tax Inquisitors.		Tax Duplicate for 1895.			Amount added to the Duplicate through information furnished by Tax Inquisitor for 1895.	Percent- age of Amount so added in total Personal Property. 1895.	Amount added in 1896.
	1893.	1894.	Total Property Taxed.	Personal Property.	Per cent of Per- sonal in Total.			
COUNTIES HAVING CITIES FROM 10,000 TO 25,000.								
Hancock			\$20,179,896	\$5,426,620	26			\$882,936
Jefferson		\$62,760	17,844,170	6,221,170	34	\$184,530	.029	195,970
Lawrence	\$361,606	475,806	7,672,956	2,705,776	35			
Licking	100,000	517,250	23,085,449	7,541,239	32	110,240	.014	173,500
Muskingum	184,037	87,332	23,353,921	7,129,760	33	223,736	.029	52,365
Richland	1,322,340	328,751	20,920,523	7,241,113	34			
Ross			18,591,444	6,824,674	36			179,967
Seneca			20,244,870	5,748,680	28			
Scioto			10,318,030	3,738,500	36			
COUNTIES HAVING CITIES OF 4,000 TO 10,000.								
Ashtabula			17,777,560	65,888,570	37			
Athens		68,810	8,465,440	2,849,785	33	217,815	.076	4,755
Belmont	29,003	80,460	20,916,669	7,232,779	34	325,000	.044	
Champaign	67,123	67,223	17,310,777	6,347,267	36	51,437	.008	18,540
Crawford		1,694,700	16,904,224	5,995,554	35			
Darke	180,750	24,770	20,395,640	7,041,210	34	208,570	.020	123,280
Defiance		1,583	7,742,773	2,193,479	27			35,730
Delaware			14,266,770	4,957,810	34			
Fairfield		17,965	16,566,510	5,587,010	33	19,500	.003	4,200

TABLE V.—CONTINUED.

	Amount added to the Tax Duplicate through information furnished by the Tax Inquisitors.		Tax Duplicate for 1895.			Amount added to the Duplicate through information furnished by Tax Inquisitor, 1895.	Percent- age of Amount so added in total Personal Property, 1895.	Amount added in 1896.
	1893.	1894.	Total Property Taxed.	Personal Property.	Per cent of Per- sonal in Total.			

COUNTIES HAVING CITIES OF 4,000 TO 10,000.								
Payette		\$77,900	\$13,373.983	\$3,987.723	29	\$13,450	.003	\$20,500
Gallia			6,471,436	2,455,470	37			158,214
Greene	\$47,640		17,623,395	5,943,755	33	69,869	.011	
Guernsey			8,385,852	2,499,292	29	527,570	.210	
Harden		695,070	11,545,330	3,574,890	30	8,524	.002	55,870
Heron	677,650		16,067,969	5,604,119	34	1,257,209	.224	
Jackson	312,285	2,900	6,265,754	2,546,824	40			
Knox		887,200	14,157,965	4,505,242	31	44,000	.009	121,400
Lake			12,807,990	5,603,400	43	897,400	.160	
Logan		108,380	13,376,350	4,136,430	30	89,390	.021	36,280
Lorain	112,477		18,427,592	6,717,009	36			
Marion			14,288,248	5,158,358	36			
Miami	538,880	118,050	21,480,720	6,658,250	31	67,080	.010	298,097
Miegs			6,362,991	1,931,976	30			254,844
Pickaway			16,667,846	4,875,896	29	49,425	.010	334,640
Sandusky	39,000		14,479,280	5,149,250	35			
Shelby	1,647	87,650	11,500,520	3,473,220	30	4,800	.001	
Trumbull			18,594,012	8,113,632	43			133,270
Tuscarawas			17,533,190	5,500,220	31			839,660
Van Wert			9,114,310	3,596,720	39	96,850	.027	

TABLE V.—CONTINUED.

	Amount added to the Tax Duplicate through information furnished by the Tax Inquisitors.		Tax Duplicate for 1895.					Amount added to the Duplicate through information furnished by Tax Inquisitor. 1895.	Percent- age of Amount so added in total Personal Property. 1895.	Amount added in 1896.
	1893.	1894.	Total Property Taxed.	Personal Property.	Per cent of Per- sonal in Total.					
COUNTIES HAVING CITIES OF 4,000 TO 10,000.										
Washington	\$ 783,980	\$ 27,982	\$12,964,639	\$4,602,849	35					
Wayne	35,200	97,800	21,065,659	7,682,689	35	\$566,061	.073			\$81,350
COUNTIES HAVING NO CITIES OF OVER 4,000.										
Adams	18,800	181,870	4,893,057	1,421,987	29					
Ashland			11,473,540	3,393,360	29					39,140
Auglaize		59,260	10,153,812	3,485,382	34					
Brown	205,325	95,950	8,268,102	2,461,075	29	32,117	.013			35,972
Carroll	22,500	241,126	8,148,890	2,449,410	30	190,310	.079			
Clermont	94,444	97,828	10,238,340	2,406,090	23	44,330	.018			
Clinton	1,266,733		12,479,060	3,896,330	31					
Coshocton	567,896	387,660	11,496,750	4,095,190	35					583,000
Fulton			6,985,510	1,996,940	28					
Geauga	96,658		6,966,648	2,106,148	30	187,795	.089			55,100
Harrison			11,018,050	4,824,720	43	95,000	.020			
Henry			6,531,460	1,754,940	26					
Highland	165,310	279,257	11,330,481	3,612,315	31	35,274	.009			20,000
Hocking		447,520	5,363,785	1,914,323	35					
Holmes			7,656,794	2,675,801	34					214,460
Madison	222,300	147,820	13,569,610	4,448,690	32	35,880	.008			111,140

TABLE V.—CONTINUED.

	Amount added to the Tax Duplicate through information furnished by the Tax Inquisitor.		Tax Duplicate for 1895.		Per cent of Personal in Total.	Amount added to the Duplicate through information furnished by Tax Inquisitor. 1895.	Percentage of Amount so added in total Personal Property. 1895.	Amount added in 1896.
	1893.	1894.	Total Property Taxed.	Personal Property.				
COUNTIES HAVING NO CITIES OF OVER 4,000.								
Medina		\$ 7,800	\$11,687,562	\$4,557,562	38			\$ 18,710
Mercer	\$ 45,100		8,353,560	2,435,350	29	\$ 12,850	.005	334,029
Monroe	700	36,975	6,209,551	2,493,251	40			155,200
Morgan	14,902		6,869,257	2,540,371	36			76,770
Morrow	12,600		9,662,352	3,272,085	33	210,533	.065	450,525
Noble	2,700	84,470	5,319,548	1,617,138	30	42,292	.026	
Ottawa			7,254,586	2,730,028	37			
Paulding			4,899,576	1,316,356	26			
Perry	48,600	22,860	8,792,281	3,107,649	35	521,255	.167	
Pike	1,370	18,813	4,186,660	1,512,870	36			
Portage	105,605	15,700	16,749,740	6,618,745	39	93,820	.014	112,005
Preble	40,460		15,103,963	5,304,893	35	90,220	.017	
Putnam	110,815		9,714,243	2,534,264	26			
Union			10,562,240	2,593,320	24	172,582	.066	43,010
Vinton	8,756	5,710	3,225,464	1,261,111	39	26,880	.021	
Warren	146,579	147,654	15,405,444	5,955,864	38	314,934	.055	183,309
Williams	500		8,990,090	2,769,020	30			
Wood	147,830	7,350	19,479,010	7,178,820	36			
Wyandotte			11,307,100	3,973,110	35	157,940	.040	67,400

V.

CONCLUSION.

The Ohio Tax Inquisitor Law has now been in operation for ten years (in the two largest cities for a longer period), and it ought to be possible by this time to reach some conclusion as to its efficiency. But it does not appear to be either a pronounced success or a conspicuous failure. It has demonstrated that it is not capable of reforming the general property tax. In spite of its operation, abuses and evasions undoubtedly continue to exist. This is shown by the continued falling off in the assessed valuation of personal property in such a city as Cincinnati, where the system has been tried longest. But as compared with other states, the general property tax works remarkably well in Ohio. Nowhere in this state does one find such humiliating failures to secure adequate returns of personal property as are met with in the older states, where that form of taxation is still preserved. The inquisitor law seems, in fact, like a last attempt to buttress up the decaying general property tax, which in spite of the practical difficulties in the way of its administration, is still popularly regarded throughout the United States as the ideal tax system. And it must be admitted that, if the general property tax is to be retained, every reasonable effort ought to be made to properly enforce it. Though the inquisitor law alone does not show itself capable of preventing abuses and evasions, it can be shown to secure the listing for taxation of a considerable amount of intangible property in

the aggregate. This amount is small, however, as compared with the taxable property in the state; but it is unquestionably sufficient to justify the continuance of the law, especially since there are so few objections to it. For it cannot be shown to have worked injustice, and it is doubtful if it has driven capital from the state in appreciable quantities. That it is inquisitorial, may or may not be true, according as we define that word; but this is a purely sentimental objection, and scarcely worthy of consideration.

Nevertheless, the system seems, from present indications, to be breaking down. This is shown by the falling off in the number of counties availing themselves of the system, and in the reduction in the amount of property discovered and subjected to taxation by means of it. Moreover, there is an organized and persistent campaign against it by a very influential class of citizens and, though previous attempts have failed, there is a strong probability of its being repealed before long. This organized effort against it has already made a few county auditors where the system is adopted reluctant to enforce its provisions, or to coöperate with the inquisitor in the search for omitted property. Where this is the case, the system is practically useless. Meanwhile, the general property tax enjoys the prospect of an indefinite survival. There is little to encourage the hope of a reform of the general system of taxation, and, if the tax inquisitor law is repealed, there is reason to fear that the present system of taxing all forms of property at a uniform rate, will be less well enforced than it is now. The prospect is not very flattering for tax reform.

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THE AMERICAN FEDERATION OF LABOR

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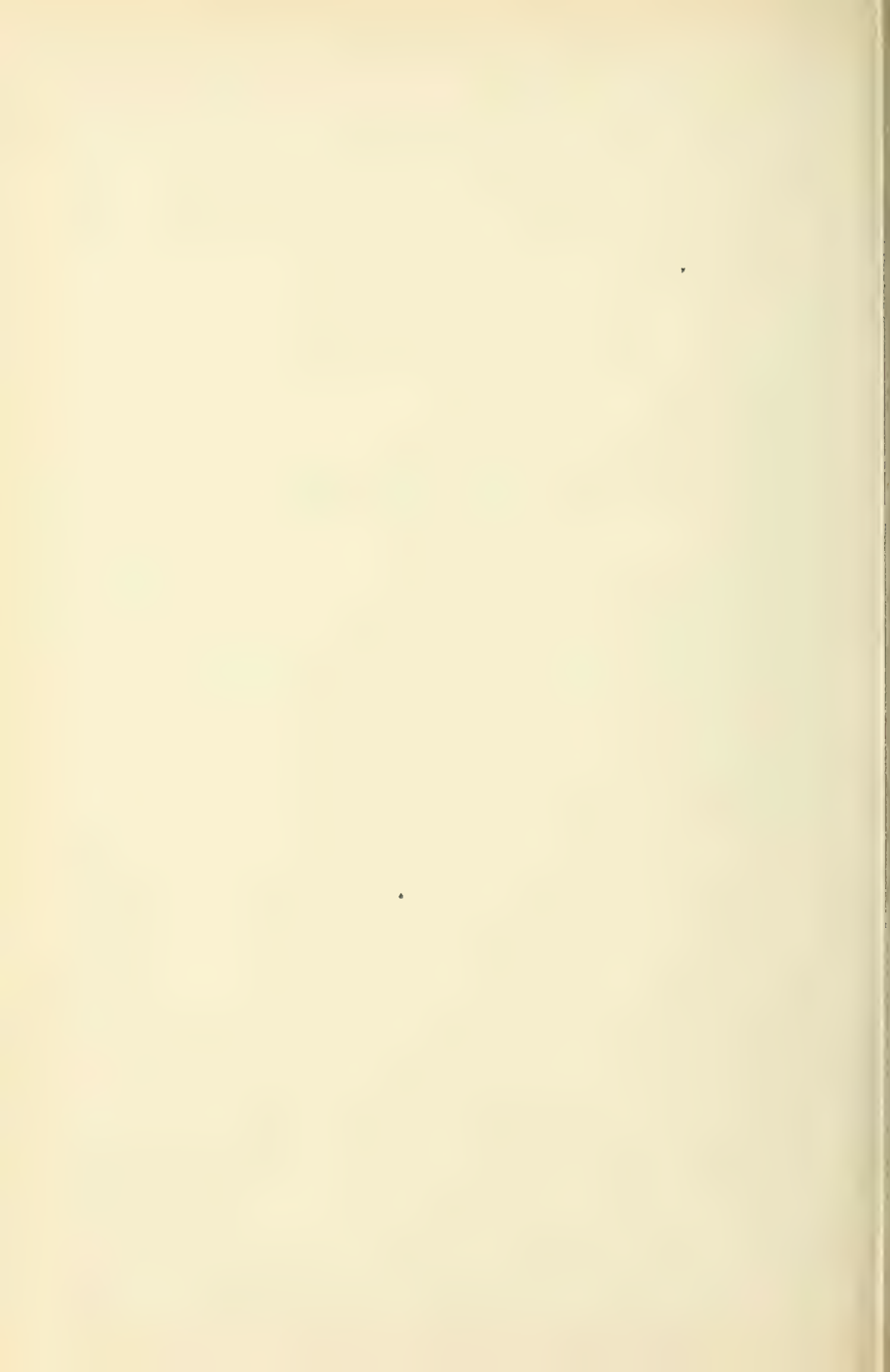
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The American Federation of Labor.



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THE AMERICAN FEDERATION OF LABOR.

INTRODUCTION.

So much success as trade unions in the United States have as yet attained is due in considerable measure to their combination for concerted action. Before 1850 a trade union seldom extended beyond the members of a trade in a single town. Gradually, however, the workmen have responded to the increasing need for a larger unity until to-day one can no longer think of trade unions as local bodies with a narrow range of influence, but as organizations of national extent and national importance. In the following pages a study is made of the most comprehensive labor organization in America, the American Federation of Labor,¹ which aims to unite for concerted action "every trade and labor organization in America under the trades-union system of organization."

¹Only two accounts, both slight, of the American Federation of Labor have been published: by President Samuel Gompers, in *The Labor Movement: the Problem of To-day*, (edited by George E. McNeill), pp. 596a-596p, and by P. J. McGuire, *The American Federation of Labor—Its History and Aims*, published as an appendix to the reprint by the Federation of a pamphlet on Trade Unions by Wm. Trant, pp. 38-43.. The chief printed sources of information are: (1) Reports of the annual conventions of the Federation. (2) Two verbatim reports of debates in the conventions of 1890 and 1894 on the relation of the Federation to the Socialist Labor Party and to socialism. (3) *The American Federationist*, the official journal of the Federation, published monthly since 1894. (4) Eight pamphlets on the principles of trade unionism and the eight hour movement, published by the Federation.

I wish to express my obligation to the members of the Federation who have given me assistance, especially Messrs. Foster, Furuseth, Gompers, Kreft, Lloyd, Morrison, P. J. McGuire, McNeill, and Strasser, without whose aid this account would have been much less complete.

The Federation has never published accurate statistics of the total number of workmen in the organizations which it represents. Estimates of its present numbers, given me by several prominent men in the Federation, vary all the way from 350,000 to 700,000.

I.

HISTORY AND ORGANIZATION.

When the American Federation of Labor was founded in 1881, many of the local trade unions had already begun to learn the lesson of combination. In the decade before the Civil War, local unions in several industries had united into national unions (often called "international" unions when they included Canadian branches); but each of these central organizations was confined to the unions of a single trade. The next step was the federation of all the unions in a single city, of whatever trade, into a delegate body, usually called a central labor union. What these central labor unions do for the trades unions of a city, the American Federation of Labor does for the trade unions of the country.

The American Federation of Labor was not without precedents in the American labor movement. Aside from the central labor unions in Cincinnati, Boston and New York, the first instance of a federation which included trade unions of various trades was the National Labor Union. This organization, founded at Baltimore in 1866, could fairly be called a national body, embracing as it did the strongest national trade unions in the country. Two demands of this union were not in vain: it pointed out the need of a national labor bureau, and it worked for an eight hour day for all government employees. But the

union itself held its last convention in 1872, when it yielded to the fatal temptation of going into politics and nominated a candidate, David Davis of Illinois, for the Presidency. This political action provoked so much discussion that one local union after another, believing, as Mr. McGuire says, that the National Labor Union had entered a field of operations for which it was not intended, withdrew its support.

In the period between the crisis of 1873 and the year 1881 half a dozen labor organizations composed of workmen from various trades had a considerable membership. They were not, however, wholly of a trade union character, but entered largely into politics; they were all secret orders; and most of them were only represented in a group of states. At least three attempts were made to unite these organizations into a large federation, but failed owing to the intense rivalry between them, each anxious to overreach the other. Aside from the national unions in a few trades, the most striking characteristic of labor organizations during this period was lack of unity. So long as these secret orders, some of which declared that trade unions had outlived their usefulness, thrived, any comprehensive trade union organization was well nigh impossible. With the exception of the Knights of Labor, however, all these secret orders were short-lived.¹ Such, in brief, had been the development of trade union organization in the United States before 1881, when the American Federation of Labor was founded.

¹ These organizations are described by Messrs. Gompers and McGuire in the sketches just referred to.

The preliminary step in the organization of the Federation was a convention called August 2, 1881, at Terre Haute, Indiana, by two secret orders, the Knights of Industry, and the Amalgamated Labor Union, a body composed of the disaffected members of the Knights of Labor. Although on the face of the call the object of this convention was the establishment of a national labor congress, its real object (so Mr. McGuire tells us) was the foundation of a new secret order to supplant the Knights of Labor. The trades union delegates, however, many of whom at this time were also members of the Knights of Labor, successfully opposed this plan. Instead, they issued a call for a second convention at Pittsburg in the same year, where they organized the Federation of Organized Trades and Labor Unions of the United States, which became in 1886 the American Federation of Labor. Since 1889 the latter Federation has recognized the continuity of organization by dating all its proceedings from 1881.

To understand the organization of the American Federation of Labor we must consider the various forms of unions of which it is composed, their relation to each other and their relative importance. Four varieties of trade unions are affiliated with the Federation,—local unions, national unions, central labor unions of cities, and state federations. The Federation is exclusively an association of trade unions, and has no direct relations with their individual members.

Local unions are the most elementary form of trade union organization. Their membership is confined to

workmen of a single locality, and, with the exception of the federal unions, to workmen of a single trade. These federal unions are local unions which have been organized by the American Federation of Labor to provide organization for workmen in occupations in which no trade union exists, or in which the workmen are too few to form a distinct union. The federal unions are strictly limited in extent; not more than three may be chartered in the same city and no workman in whose trade a local union already exists is admitted. They are regarded as recruiting unions for workmen who are to be organized as soon as possible into trades unions of their various trades.

In most trades the local unions all over the country are united into a national union of the trade, as for example, the International Typographical Union. In the large cities the trade unions of all trades unite in a central labor union, and in some states the trade unions unite in a state federation for the purpose of securing state legislation concerning labor matters.

Since the same local trade union may belong to all three of these larger organizations, questions of disputed jurisdiction easily arise. To avoid this conflict of powers and consequent loss of efficiency, the Federation has undertaken to guide the mutual relations of these organizations. Its invariable policy has been to make the national unions the units of power in the trade union world, with complete and undivided authority over their local unions. It makes great efforts to form a compact national union in every trade, and requires all local

unions to join the national union of their trade on penalty of suspension from the Federation. Thus the Federation aims to bring about the combination of all local trade unions into national unions, which in turn shall be united in the Federation.

President Gompers of the Federation has further proposed that the workmen of each of the great divisions of industry should hold a convention to legislate upon questions which affect their own trade. The building trades, the boot and shoe workers, the textile workers, and the railway workmen (the latter, however, are not represented in the American Federation of Labor) now hold such conventions. By this means the autonomy of each trade is still more firmly secured. Nothing has yet come of the further proposition that the delegates to the American Federation of Labor should be elected by these conventions.

The Federation relegates the central labor unions and state federations to the inferior position of auxiliaries in the trade union movement. In no event are they to interfere with the jurisdiction of the national unions. Their value as a power to enforce local demands, such as state labor laws and municipal recognition of trade unions, is, however, fully recognized by the Federation, which instructs the national organizations to urge their local unions to join the central labor union in their vicinity.

The workmen who are united through these trade unions in the American Federation of Labor are in other respects by no means homogeneous. Representing the

most diverse forms of industry in all parts of the country, they generally have no intimate knowledge of each other's needs. Some, such as the carpenters and printers, are comparatively prosperous skilled artisans, whose unions charge high dues and give important insurance benefits. Others are common laborers who can not easily pay considerable dues. Some are women. Organizations of farmers, who are freeholders, are debarred from membership on the ground that they are associations of employers. A few local unions of farm laborers have been affiliated with the Federation, but the Federation has done very little to organize farm laborers,—a problem of extreme difficulty. For the most part, the Federation represents more or less skilled workmen. The race differences among the members are also great,—the German element being especially strong. Except in regard to the negroes, however, race disputes are unknown. Officially, the Federation refuses to draw a color line, and negroes are freely admitted to membership, although they are debarred from some Southern unions. The workmen represented are also of all sorts of political belief, including, as we shall see, a group of pronounced socialists.

Although the American Federation of Labor aims to include all trade unionists, probably more than one-half still remain outside. The five railway unions which are united in a distinct federation, and the Bricklayers International Union are the most important unions which have not yet joined the Federation. There is a growing disposition, however, among the railway unions in favor

of joining the Federation. Aside from the Knights of Labor and some southern and western trade unions which desire a federation of their own, most of these outside labor organizations are in agreement with the Federation in the larger questions of policy, and even willingly accord to the Federation the leadership of the trade union movement. For this reason the apparent lack of unity in the trade union movement becomes less real; but it still remains true that the efficiency of the movement is diminished by such wide-spread sectarian division.

The government of the American Federation of Labor, as its name implies, is of a federal character. As in the federal government of the United States, all powers not expressly delegated by its written constitution to the central body are reserved to the various units. The Federation aims to supplement, not to supplant the powers of the trade unions. Each affiliated union retains complete autonomy in the conduct of its internal affairs, its funds, its strikes, the administration of its insurance benefits, and all matters peculiar to its trade. Moreover, although the resolutions passed by the conventions of the Federation represent the policy of the majority, this policy cannot be imposed upon any union against its will. The rights of the minority are thus made secure. The sole compulsory power of the Federation is the right to suspend or expel an organization.

By this simple expedient of limiting its own powers of compulsion, the Federation has overcome the natural suspicion of the various trade unions, and has at one

stroke cut clear from a great mass of internal dissensions, otherwise inevitable. The Federation has always been clear-sighted in refusing to overstep these limits of action, imposed as they are by the nature of the organization. In a federation of such various and powerful units as the national trade unions, the majority can only coerce the minority on pain of the disaffection and eventual secession of this minority. The decentralized form of the Federation has been proved successful by the permanence and growth of the organization. The real strength of a voluntary society like the American Federation of Labor is not measured by its powers of compulsion but rather by the extent to which it enjoys the confidence and loyalty of its members.

The officers of the Federation of Organized Trades and Labor Unions were at the outset confined to a secretary and legislative committee, similar to the parliamentary committee of the British Trade Union Congress after which it was modelled. The growing need of permanent executive officers was met, however, in 1887 by the appointment of a president with a salary of \$1,200 a year, (since increased to \$1,800). He is assisted by a secretary with a salary of \$1,500, a treasurer and four vice-presidents, who together form the executive council. Since this council meets only four times a year, much power is necessarily in the hands of the president. Almost inevitably, the Federation, which in 1881 announced the intention of having no salaried officers, developed the need of an efficient and permanent executive, who should devote all his time to the supervision of the Federation.

The strictness with which the Federation respects the local autonomy of each trade appears most strikingly on the financial side. An annual tax of three or four cents from each member of an affiliated national trade union, twenty-four cents from each member of a local union which is not connected with any national union, and ten dollars from each central labor union and state federation has proved sufficient to meet the necessary expenses of the Federation.¹ This income is used to pay salaries, travelling expenses, printing, and the expenses of the convention.

It is interesting to notice that the tendency of the trade unions has been gradually to extend the financial powers of the Federation, as well as the powers of its executive. At first the Federation had no power to grant money in aid of strikes; but the revised constitution of 1887 gave the executive council the right to call on the unions for financial aid for strikes which it approved,—such contributions being, however, wholly

¹ The following table shows the yearly revenue of the Federation since 1886 :

1887-----	\$ 2,100.34
1888-----	4,512.55
1889-----	6,838.40
1890-----	23,849.74
1891-----	17,702.36
1892-----	17,834.51
1893-----	20,864.62
1894-----	15,346.43
1895-----	13,751.75
1896-----	16,290.18
1897-----	18,639.92

The revenue for 1890 includes over \$12,000 given to assist the carpenters in their strike for eight hours; and that for 1893 includes \$7,043.66 contributed to the cost of legal defence of workmen arrested during the Homestead strike.

voluntary. This system of voluntary aid was soon felt to be insufficient, and in 1889 the constitution was amended to permit the Federation to levy a compulsory tax of not more than two cents a week for five weeks on each member of the affiliated national unions for the purpose of assisting a strike or lock-out of any of these unions. The minority presented the constitutional objection that such assessments were beyond the power of the convention and foreign to the federal character of its organization. But the need of funds to lend weight to the demand for the eight-hour working day which the Federation was to support, was the deciding argument. Under this rule the Federation gave the carpenters more than twelve thousand dollars in aid of their strike for eight hours. The more far-reaching proposal to establish by tax a large defense fund, which should be lent or given to the organizations which contributed, when they become involved in a strike, has not been adopted by the Federation.

The policy of the Federation is fixed at annual conventions by the delegates from the affiliated organizations. These conventions are held in December at a different city each year, and are open to the public. The voting power of large national trade unions does not increase in proportion to their membership, lest they should so overwhelm the smaller unions as to cause dissatisfaction and possible secession.¹ A central labor un-

¹Trade unions of 1,000 members have 1 vote.

"	"	4,000	"	"	2 votes.
"	"	8,000	"	"	3 "
"	"	16,000	"	"	4 "
"	"	32,000	"	"	5 "

ion or state federation, since its members are largely the same persons who compose the national unions, has only one vote. A few important questions have been submitted to a referendum vote of the members of the affiliated trade unions. It is of interest to note that, beginning in 1894, the Trade Union Congress of Great Britain and the convention of the Federation, have each sent two delegates to the other's convention.

The conventions consider the recommendations submitted in the annual reports and also a mass of resolutions (144 in the convention of 1897) introduced by individual delegates. The custom of the convention is to refer all reports and resolutions at once to committees which either recommend or disapprove them. The committees are appointed by the president, and the system undoubtedly serves to steady the action of the convention by giving a measure of control into the hands of the more experienced delegates.

II.

INTERNAL POLICY. RELATION TO OTHER ORGANIZATIONS.

The objects of the American Federation of Labor are stated in its constitution as follows :

1. The objects of this Federation shall be the encouragement and formation of local Trade and Labor Unions, and the closer federation of such societies through the organization of Central Trade and Labor Unions in every city, and the further combination of such bodies, into State, Territorial, or Provincial organizations, to secure legislation in the interest of the working masses.

2. The establishment of National and International Trade Unions, based upon a strict recognition of the autonomy of each trade, and the promotion and advancement of such bodies.

3. An American Federation of all National and International Trade Unions, to aid and assist each other, to aid and encourage the sale of union-label goods, and to secure national legislation in the interest of the working people and influence public opinion, by peaceful and legal methods, in favor of organized labor.

4. To aid and encourage the labor press of America.

Its policy is thus two-fold. Besides what may be called the external policy, such as the promotion of legislation and the encouragement of the sale of union label goods, the Federation seeks to bring about by means of closer federation more efficient organization of the American trade union movement. This work within the trade union world, though less conspicuous than the external activity of the Federation, and on that account generally ignored, deserves careful consideration.

Organizers of the Federation—over three hundred in all—work to bring the unions of a trade together in a national union, and especially to organize new local

unions. These organizers receive no pay, except necessary expenses. Of late they have been devoting especial attention to the difficult problem of organizing unskilled laborers.

The Federation is the medium through which the more experienced trade unionists give wholesome advice to the cruder and less efficient unions. Year after year president Gompers, in his annual reports, has urged the unions to strengthen their organization by charging high dues and adopting a system of insurance benefits. A well-filled treasury, he points out, is one of a trade union's most potent arguments against an unwilling employer; the benefit funds, for sick, funeral, disability, and out-of-work benefits enable a trade union to do more for its members; and above all the existence of benefit funds secures a permanency in the membership of the trade union. It was the unions without funds which broke up during the depression of 1893, while the only national trade union affiliated with the Federation which had a continuous growth in membership during this same period was the one which had the system of high dues and benefits generally established. Further, only those unions which maintain their membership intact during dull periods of industry are prepared to take advantage of the first sign of returning good times. This attitude of president Gompers is heartily endorsed by the conventions of the Federation; the convention of 1896 resolved that no local union should be permitted to remain affiliated with the Federation unless its dues were at least fifty cents a month. Not many years ago,

such a proposal would have met with strong opposition, but now most unions have come to appreciate the advantages of substantial regular dues.

The great lack of unity in the American trade union movement has often resulted in the existence of rival trade unions in the same trade. The division in authority resulting from this dual organization is uniformly bad. The employer has to deal with two sets of trade union officials instead of one; and as a rule, the two organizations have ended in giving much more energy to fighting each other than to advancing the interests of their members. The American Federation has taken a firm stand against this needless dual organization. It invariably refuses to recognize more than one national organization in a single trade,¹ and it undertakes to protect the organization which it recognizes against both rivals and seceders.

It remains to consider the relation of the American Federation of Labor to the rival labor organization of the Knights of Labor, which had existed since 1869. The Federation and the Knights both included workmen of various trades, but they differed radically in their forms of organization. While the Knights admitted any one to membership, (except the three ostracized classes of lawyers, bankers and saloon-keepers) the Federation closely confined its membership to workingmen. The organization of the Knights

¹ The case of the American branches of the (English) Amalgamated Society of Carpenters and Joiners is an exception. They were admitted into the American Federation of Labor by consent of the American society, the United Brotherhood of Carpenters and Joiners.

rested on lodges founded by the central order, and power was strongly centralized; the units of the American Federation of Labor were strong, independent national unions. The fundamental difference between the two bodies however, lay in the composition of the local units. The Knights tried to a considerable extent to organize in the same local assemblies all classes of workmen, regardless of vocation. The local unions represented in the Federation, on the contrary, comprise only workmen of a single trade (with the unimportant exception of the federal unions). The Federation deems it a mistake to invest authority over the affairs of a trade in a union in which other trades are represented; and asserts the principle that the workmen of a craft alone have the right to regulate the affairs of that craft.

When the Federation was first founded, the two organizations apparently intended to live harmoniously together. At the Federation convention of 1881 nearly half the delegates represented local assemblies of the Knights of Labor. Trouble soon arose, however, from the rivalry between the organizations of the Knights and the Federation among workmen in the same trade. The unions of the Knights provoked great bitterness of feeling by accepting workmen as members whom the trade unions had declared "unfair." In some cases, when a trade union went on strike, the Knights went so far as to organize the workmen who took their places into one of their local assemblies. The resulting differences developed into an ugly fight. Several conferences between the two organizations utterly failed to bring

about an agreement. The Federation demanded that the Knights of Labor should surrender all their authority in trade union affairs, which had become their chief concern, and confine themselves to the educational branch of their work. The struggle has continued intermittently ever since. In several instances the rival local organizations in the same trade have fought each other till they forgot their trade interests, greatly to the convenience of the employers. For a time both organizations suffered; but as the final result the American Federation of Labor has steadily grown, while the membership of the Knights of Labor, owing both to its political intrigues and to the imperfect basis of its trade organization, has dwindled until today the order is not strong enough except in a few localities to be a serious rival to the Federation.

The conflict was a struggle for supremacy, of course, but deeper than that it was a conflict between the different principles of organization underlying the two orders. Under the Knights of Labor, the policy of the workmen in a trade might be fixed, in part at least, by men outside the trade. The American Federation of Labor, supported by the national trade unions, gained a victory for the principle that the members of a trade should have undivided authority over the affairs of that trade.

III.

EXTERNAL POLICY.

The exertions of the Federation to bring order and unity into the trade union movement have all been to one chief end,—to develop a trade union organization, which would give greater force to its demands. It remains to consider what these demands are. To understand the full significance of the policy of the Federation, one must bear in mind that it not only reflects the attitude of a large number of trade unionists, but that, viewed from a political point of view, it is fairly typical of the opinions and desires of a large and active class of voters in our body politic. The chief external activities of the American Federation of Labor may be grouped under two main heads: first, the promotion of trade matters which are ordinarily reserved to the individual trade unions, and secondly, the attainment of labor legislation.

Certain departments of trade union activity lie, strictly, outside the scope of the Federation. The Federation has nothing to do with the insurance of workmen by trade unions, further than to suggest its value. The power of initiative in such trade matters as boycotts, the use of the union label, and strikes, is also reserved to the individual trade unions. Yet the Federation gives its support to the policy already fixed by the unions; and this support may be very considerable.

Boycotts, which the Federation had once or twice en-

dorsed in the preceding years, first began to occupy an important place in its policy in 1887. When the Federation approves a boycott, it undertakes to make the fact that the employer in question has been declared unfair, as widely known as possible. Lists of such employers are printed each month in the *American Federationist* under the heading, "We don't patronize." Especially in cases where a strike is impracticable, for example, when an employer refuses to employ workmen who are members of a trade union, the Federation regards the boycott as an effective means of warfare. While all trade unionists support the boycott in principle, there is a strong feeling that it is most effective when used sparingly. At first the number of firms boycotted was so great that workmen could not remember them; but since 1893 the Federation has attempted to concentrate the attention of its members on the boycotting of a few leading firms. It should be added that the Federation does its best to administer this system of boycotts fairly. Its executive council never approves the application of a trade union for a boycott until the firm involved has been given opportunity to present its side of the case. The executive council also attempts to bring about a settlement of the dispute leading to the boycott,—with such success that President Gompers reports that fully one-third of the cases are thus adjusted without its becoming necessary to put the firm on the "unfair list."

The use of the 'union label' to designate goods manufactured under conditions satisfactory to the trade union, originated by the cigar-makers in 1874, has since

become very general.¹ In 1897 the Federation, besides having its own label, endorsed the labels of twenty-seven national trade unions. The 'union label,' like the boycott, is a means of discriminating against 'unfair' firms, but its effectiveness goes farther. By promoting the demand for goods marked 'union made,' it is calculated to lead employers to give the preference to trade union workmen in order to secure the right to use the 'union label.' The absence of this label from an article of common use, and especially from articles like beer or tobacco, seriously interferes with its sale among workingmen. "This weapon [the union label]," says president Gompers, "is productive of good results with the expenditure of less energy than any other at the command of labor." While the establishment and control of 'union labels' is wholly in the hands of the national trade unions, the Federation does what it can to encourage the purchase of 'union label' goods.

The Federation regards strikes, including 'sympathetic' strikes, as inevitable under present conditions. Those strikes in which the employers refuse to treat with committees of their workmen appeal especially to the workingman. The president's annual reports, however, urge the trade unions to show discrimination and learn when not to strike,—when they are improperly organized, or on a falling market, or when they have an empty treasury. The ordering and conduct of strikes is a power which the individual trade unions prefer to

¹ John Graham Brooks, *The Trade Union Label*, Bulletin of the U. S. Department of Labor, No. 15, (March, 1898), pp. 197-219.

keep in their own hands. Strikes for the enforcement of the eight-hour working day, however, while ordered as usual by the unions, have been planned in conference with the Federation. The eight-hour day is so universally desired by trade unionists that the Federation, by general consent, has assumed the leadership of the eight-hour movement.

At the Federation convention of 1884, a general strike for the eight-hour day was planned to take place May 1, 1886. Each organization was to determine for itself whether it would join the movement. Four of the national trade unions affiliated with the Federation entered the fight for the eight-hour day. Of these, the cigar-makers and the German printers were successful; the furniture workers compromised on nine hours; and the carpenters won the eight-hour day in seven cities, and compromised on nine hours in eighty-four cities.

Two years later the Federation began a renewed attempt to secure the eight-hour working day in 1890, by devoting the year 1889 to such systematic preparation as had never been known in the American trade union movement before. It collected information from the various unions as to their strength, especially their financial resources, and their readiness to strike for the eight-hour day and it threw its whole strength into a vigorous campaign to make more real to the workmen the ideal of eight hours for work. It distributed eight-hour tracts by Messrs. Lemuel Danryid, George Gunton, and George E. McNeill; it sent out several speakers and appointed four days on which mass meetings in favor of the imme-

ciate enforcement of the demand for the eight-hour day should be held all over the country. On September 2, 1889, such meetings were held in four hundred and twenty cities and towns. It may be worth while, even at the risk of undue digression, to consider the arguments for the eight-hour day which were advanced in this campaign of the Federation.

Great stress was laid, as might be expected, on the social value, as well as the value to the individual workman, of increased leisure. But another argument was given prominence, well calculated to make the eight-hour movement popular. All the writers of the eight-hour tracts proclaimed that shorter hours brought higher wages. As the rhyme expressed it,

"Whether you work by the piece, or work by the day,
Decreasing the hours increases the pay."

Up to this time workmen in America had usually been more ready to strike to maintain or increase wages than to reduce the hours of work below ten, at the risk of any reduction of wages. But here was a mode of reasoning which avoided this disagreeable dilemma by telling the workman that he could have at once more leisure and more pay. The argument in support of this statement was as follows: "The adoption of an eight-hour day would tend to increase wages in two ways, first, by reducing enforced idleness; second, by creating new wants and raising the standard of living."¹

¹George Gunton, *The Social and Economic Importance of the Eight Hour Movement*, p. 13.

All the Federation writers distinctly repudiated the assertion, made so much of by many economists,¹ that a workman would do as much work in eight hours as he now does in ten. They maintained, on the contrary, that the shortening of the working day would lessen the amount produced daily by each workman, and, therefore, lead generally to the employment of more workmen,—as it undoubtedly would in the case of many workmen, such as railway employees, whose work is of the nature of personal services. This increased demand for labor would, it was argued, result both in a rise in wages and in a reduction of the number of the unemployed.

Workmen believe that this increased demand for labor under the eight-hour system will help counteract the immediate effect of the rapid introduction of machinery, which operates to throw workmen out of employment not only directly, but, as they believe, indirectly also, by causing overproduction and industrial depression. They demand the eight-hour day, therefore, as a form of compensation for the hardship which they believe the rapid introduction of machinery brings upon them. In another way workmen see a close relation between the introduction of machinery and their demand for shorter hours. They base the demand on their right to share in the increased production which the invention of machinery has made possible. Contrary to the general belief, the American Federation of Labor has never opposed the introduction of machinery. Of course individual trade unionists protest against the machines

¹ Thus by Mr. John Rae, *Eight Hours for Work*.

which have made their skilled hand labor worthless, as other people oppose legislation which interferes with their personal or corporate interests. Even these workmen feel, however, as one delegate expressed it, "We could not go on record as fighting machinery," and every workman realizes that the introduction of machinery is inevitable. The Federation, therefore, instead of entering upon a quixotic fight against the introduction of machinery, seeks to obtain for the workmen a greater share in the resulting increase of national wealth, in the shape of better conditions of work, higher wages, and shorter hours.

The trade union arguments for the eight-hour working day stand thus: it will benefit society as well as the workmen; it will make it easier for workmen to find employment; it will increase wages; and finally, it is only 'fair' that in this way the workmen should share in the progress due to the genius of invention.

In good degree owing to the eight-hour agitation of the American Federation of Labor, the workman's latent desire for the eight-hour day is becoming what Mill would have called 'effective.' Already president Gompers can say with truth, "The foremost demand of the organized labor movement is for a shorter workday."

In the eight-hour strike of 1886 the Federation had merely given its moral support to all the striking trade unions; but in 1890 it adopted a far better strategic plan. It singled out the carpenters as the trade in which a strike for eight hours gave the most promise of success, and concentrated its efforts in the financial support of the strike of the United Brotherhood of Carpenters

and Joiners. For the first time the Federation levied a strike assessment, which enabled it to give the carpenters over twelve thousand dollars toward the expenses of their strike. As a result of this strike, 46,197 carpenters enjoyed shorter hours of work and the eight-hour day became the general rule in several large cities. At the same time eight-hour strikes were also successful in several other industries. The plan of the Federation was to continue to aid eight-hour strikes of one national trade union after another, as they became strong enough to demand the eight-hour day. Further effort has, however, been frustrated by the industrial depression since 1893.

Workmen may obtain the eight-hour day, not only by voluntary concession of employers and by direct trade union action, as in the eight-hour strikes of 1886 and 1890, but also by legal enactment. The Federation has done much to secure the enforcement of the Act of 1869, granting the eight-hour day to most government employees, and to secure extensions of this law to apply to letter-carriers and to workmen employed by government contractors. It also urges the passage of similar laws for state, county, and municipal employees.

The convention of 1894 endorsed the demand for a national law, limiting the daily hours of work of all workmen to eight. It was recognized that an amendment to the Constitution to permit Congress to legislate on hours of labor would first be necessary. This was the first time that the Federation had given its support to the proposal to limit the hours of labor of adult male workmen, in all occupations, by law.

IV.

LEGISLATION, SECURED OR DEMANDED.

The most important activity of the American Federation of Labor, except perhaps the attainment of closer federation among trade unions, has always been "to secure national legislation in the interest of the working people." Each convention instructs the president and executive council to work for the passage of certain laws. The executive council then causes bills embodying the desired legislation to be drafted; and does earnest personal work among Congressmen, especially the members of the House committee on labor, to secure their passage. An equally important part of this work has been to watch proposed legislation and to prevent the passage of laws unfavorable to organized labor. An example of this negative work was the activity of the officers of the Federation in helping defeat bills which were introduced into Congress and several state legislatures, ostensibly to prevent conspiracies among employers to blacklist workmen. Although the Federation desires such legislation, it opposed these particular bills on the ground that they contained provisions which would prove injurious to trade unions.

The Federation leaves the work of securing state labor legislation to its state branches and to the central labor unions. Occasionally, however, it renders some

slight aid by sending one of its officers to testify before a committee of the state legislature, or by distributing copies of a state law which it deems excellent, as a model for legislation in other states. The Federation has endorsed state laws forbidding the 'truck' system, and making compulsory the more frequent payment of wages, laws to secure workmen a first lien upon property which is the product of their labor, laws compelling better sanitary conditions in dwellings, bake-shops, and factories, and for the protection of women workers and of workmen in unhealthful trades, and a law to secure one day of rest in seven to all workers. In regard to the important question of the liability of employers for accident to their workmen, the trade unions in the United States, as in England, have long striven to secure a reversal by statute of the common law rule by which an employer is not liable for injuries suffered by his employees through the negligence of a fellow workman. The Federation favors a statute law giving employees the same right to damages for personal injuries which other persons have, and has recommended the Massachusetts employers' liability law for adoption in other states. The Federation also proposes state laws making it illegal for employers to discharge an employee because of his connection with any labor organization or to require their workmen to sign a so-called 'iron-clad contract,' binding themselves not to join a trade union.

The national legislation desired by the Federation covers a wide range of subjects. A few resolutions,

while less directly affecting the policy of trade unions, serve to record what a large class of workmen think in regard to certain questions of the day. In political questions the Federation has declared itself in favor of the Australian ballot, civil service reform, the purification of primary elections, the election of United States Senators by popular vote, and direct legislation in state and municipal governments by means of the initiative and referendum. Almost every convention has passed a resolution in favor of the compulsory education of children. The government is also urged to acquire the telegraph and telephone¹ and to establish postal savings banks. With the exception of these more general resolutions, however, the Federation has confined its attention to laws which could fairly be classed as labor legislation.

While most of the laws which the Federation advocates affect the welfare of the entire body of trade union workmen, it occasionally endeavors to secure special laws for certain trades. It endorsed the law passed in 1893, to prevent accidents to railroad employees by compelling railroads to provide their cars with automatic couplers; and it endeavors to secure laws for the improvement of the condition of seamen by requiring improved forecastles, a better scale of rations, protection of seamen's wages, freedom of seamen to quit their employment when their vessel is in port, and inspection of seaworthiness of vessels. To aid the states in their efforts

¹ Only one convention of the Federation, in 1892, passed a resolution in favor of state ownership of railroads.

to suppress the sweating system, the Federation has favored a national law to prohibit the transportation of goods made in sweat-shops.

It remains to consider the more important general legislation which the Federation has urged upon Congress. In the early years of the Federation, each convention demanded laws permitting the incorporation of trade unions "in order that the property of the laboring classes may have the same protection as the property of other classes." Although such laws were passed by Congress and by six states, very few trade unions have become incorporated, and agitation on the part of the Federation for such laws has altogether ceased. The truth is, that almost all trade unions have come to believe that incorporation would bring them no advantages sufficient to counterbalance the added responsibilities, such as the liability to be sued as a society, which it would impose. Trade unions also prefer to remain unincorporated in order better to avoid the control of the courts, which they so much distrust.

A number of laws which have been favored by the American Federation of Labor, including laws to restrict the number of apprentices, to abolish the contract system of convict labor, and to prohibit the immigration of Chinese laborers and of alien laborers under contract, and the proposed law for the further restriction of immigration, may be classed as attempts of the workmen to set bounds to what seems to them the dangerous competition of "cheap labor." The opposition of the Federation to the system of letting out national, state, and mu-

nicipal work by contract, on the ground that the contractors discriminate against organized labor in favor of inferior workmen at reduced wages, may be placed in the same category. Legislation restricting the hours of labor of women and children, and forbidding the employment of children under fourteen years of age, although it is also favored on other grounds, is at the same time regarded by the Federation as another efficient means of restricting the competition of cheaper labor.

Twenty years ago most American trade unionists favored the restriction of the number of apprentices; and the earliest conventions of the Federation passed resolutions in favor of uniform apprentice laws throughout the country. This demand was soon discarded as futile in the face of the changing conditions of industry due primarily to the rapid introduction of machinery. A few trade unions, such as the plumbers, steamfitters, bricklayers, and iron moulders, still make rules for the regulation of apprentices; but most unions, like the carpenters, have given up the old system of indentured apprentices.

Every convention of the Federation reiterates the protest against the employment of convict labor in any way which brings it into serious competition with free labor. This applies especially to the contract system of Alabama, Georgia, Kentucky, and Tennessee which permits mining corporations and other private contractors to hire convicts. The attitude of the more intelligent element of the Federation is stated in the report of a special committee on convict labor to the 1897 convention.

The committee recognized that to preserve the health and morals of the convict, and to reform him, he must be employed at some productive occupation, but proposed the following state regulation of prison work to prevent the product of convict labor from coming into competition with the product of free workmen.

“1. Convict labor shall be employed in the manufacture of such articles as are needed in the state prisons and charitable institutions, and also in raising farm and garden produce for these institutions.

“2. All these industries shall be carried on by hand labor.

“3. The convicts shall only work eight hours a day.”

These regulations were endorsed by the convention. The committee also commended the system of convict labor recently adopted in Pennsylvania, forbidding the use of labor-saving machinery and providing that not more than five per cent. of the convicts should be employed at any one trade. Most states, however, have not yet adopted these restrictive laws. In order to prevent the competition of prison-made goods from these states, the Federation favors a national law forbidding the sale of the products of convict labor of a state in any other state.

Two classes of immigrants, Chinese laborers and alien laborers who come to America under contract, have always been opposed by the Federation. Since the date when this immigration was forbidden by law, trade unionists have used every means in their power to see that the law is strictly enforced. On the broader question of

the further restriction of immigration, the opinion of trade unionists represented in the Federation has undergone a great change. Until 1897, the conventions voted that no further restriction was necessary, but in that year when the question was submitted to a referendum vote of the members of all trade unions affiliated with the Federation, eighty-four per cent. of those voting favored "a reasonable measure of restriction on the lines of the educational test as contained in the Lodge bill." The more characteristic arguments advanced by trade unionists for this restriction are that the immigrants, particularly when they are of a different race and lower standard of living, swell the numbers of the unemployed and in other ways render the organization of trade unions more difficult, and thus keep down wages. Nevertheless, a minority in the Federation sharply opposes further restriction of immigration.

A series of resolutions relate to labor bureaus and statistics of labor. The early conventions urged the establishment of the United States Department of Labor. After this was attained in 1884, the convention undertook to promote the establishment of similar bureaus in the individual states, thirty-three of which exist to-day. These bureaus are especially requested to investigate "the influence of labor organizations upon the moral and material welfare, both of the wage-workers and of the community as a whole." At present the Federation favors the control of the United States census by the Department of Labor; and also wishes the head of this Department to have a place in the Cabinet.

In only one way does the Federation ask Congress to interfere in regard to the introduction of machinery ; it demands a change in the present patent laws. A new invention, argue the majority of the Federation, should bring profit, first to the inventor, and then to the community as a whole ; but our present patent system promotes monopoly by enabling a few capitalists to obtain exclusive control of an invention. The remedy proposed by the Federation is such a change in the patent laws that while the inventor is secured his reward, the use of the patented improvements are to be free to all. The Federation has failed to show, however, what form of law would accomplish this reform.

Conciliation, and arbitration, so far as it is voluntary, are favored by the Federation as means of settling industrial disputes. Previous to 1890 the Federation gave this subject little attention, although it favored the law passed by Congress in 1888 to facilitate arbitration of disputes between workmen and employers on interstate railways. Compulsory arbitration in any form is vigorously opposed by the Federation, on the ground that the decision of the arbitrator might compel employees to work against their will. The Federation has opposed the various railroad arbitration bills which have been considered by Congress since the Chicago strike of 1893, including the bill which became law in May, 1898. This bill contained limiting clauses which gained for it the support of the five trade unions of railroad employees. The Federation feared, however, that the courts would so interpret these clauses as to compel employees to

work against their will. This it thought would be especially likely to happen if the railroad corporations should make an agreement on the part of the workmen to submit their disputes to arbitration a condition of employment.

Although the Federation has declared itself in favor of voluntary arbitration, a striking lack of enthusiasm for arbitration even in this limited form is apparent. This lukewarmness, which is easily misinterpreted, is due to the fact that the workmen prefer the settlement of disputes, not by arbitration, but by conferences between the employer and a committee of workmen. The executive council of the Federation is frequently successful in adjusting trade disputes by conferences with the employers. A strong trade union prefers to conduct its own case rather than to submit the question to arbitration. Under the latter course, the conditions under which its members shall work are determined by an outsider,—a principle which is peculiarly obnoxious to the workmen. Nevertheless, when conferences have been tried and have proved unsuccessful, even strong trade unions favor arbitration as a last resort.

To appreciate the success of the Federation in securing labor legislation one has only to consider how completely the laws demanded by its first convention in 1881 have been attained.¹ This convention demanded the enforcement of the national eight-hour law for

¹ Prior to 1881 the number of national labor laws was small. Several laws regulated the treatment of seamen; and a law of 1869, which was not enforced, provided that eight hours should constitute a day's work for government workmen.

government employees, and the passage of national laws to permit the incorporation of trade unions, to protect American industry, and to exclude Chinese laborers, and foreign laborers brought to this country under contract. Every one of these demands was fulfilled before 1886. Since that time the Federation has been active in securing,—to mention only the more important national laws¹—a series of amendments which greatly increased the efficiency of the Chinese exclusion act and the alien contract labor act, the extension of the eight-hour law for government employees to letter-carriers and to the employees of government contractors, an act for the protection of the wages of seamen, an act prohibiting the contract system of convict labor for convicts in federal prisons, an act to facilitate arbitration on interstate railroads, an act to compel the use of automatic couplers on interstate railroads, and an act making Labor Day a legal holiday in the District of Columbia. While no single labor organization can claim exclusive credit for any one of these laws, the Federation has played a prominent and sometimes a decisive part in their attainment.

During the last decade workmen have begun to chafe under certain restraints imposed by the government and constitution of the United States. At present a national law to forbid the employment of children under fourteen in factories, mines, or shops, or to fix uniform hours of work even for women and children would be unconsti-

¹ For the text of all national and state labor laws see *Labor Laws of the United States*, Second Special Report of the United States Commissioner of Labor, second edition, 1896.

tutional. The Federation favors an amendment to the constitution, such as was proposed in the recent Lovering bill to permit Congress to fix the hours of labor for women and children throughout the United States. The fact that a considerable amount of labor legislation has been declared unconstitutional by the courts led the Federation, in 1897, to demand amendments to the constitutions of the United States and of the several states to deprive the courts of power to set aside "laws duly enacted by the people." For the most part, however, the working class share in the prevalent reverence for the constitution of the United States.

The use of militia or of United States troops to keep order during strikes, and above all the increasing use of injunctions as a means of interference in labor disputes have resulted, in the minds of the workmen, in a widespread and deep distrust of the government, and especially of the courts. This distrust, to an extent unknown in the United States before, is shown by a number of resolutions of protest recently passed by the American Federation of Labor. Although workmen have always disliked the use of troops to keep order during strikes, the strongest resolution passed by the Federation on this subject before 1896 went no further than to urge that officers of the militia should be men friendly to the working classes. A resolution proposed in the convention of 1896, however, recommended trade unions to discourage the enlistment of their members in the state national guard. This resolution was adopted by the convention in spite of the opposition of the committee to which it was referred.

The Federation has always favored the repeal of the so-called conspiracy laws, that is, "all laws whose object is to deny to working people the free exercise of their rights to organize and be represented by committees or agents of their own selection in dealing with employers of labor in relation to matters of wages or other conditions under which labor shall be performed." Thus the Federation demands an amendment to the Sherman anti-trust law, to exempt trade unions from the provision that combinations in restraint of inter-state trade are illegal.

The trade unionist's distrust of the government centers in his opposition to "court-made law," by which he means the recent extensive use of both mandatory and restraining injunctions by courts of equity as a means of interfering in labor disputes. He feels that a far-reaching change in the law has been made, not by Congress, but by a few judges. This feeling of distrust is heightened by a suspicion of the motives of the judges, who, trade unionists charge, have favored the employer at the expense of the workman. The American Federation of Labor protests against interference by the courts in strikes where no destruction of property or loss of life is occasioned by the strikers, and requests Congress to set a limit to the use of injunctions. As yet no law on this subject has been passed, although three bills have been considered by Congress. One, providing that officers of organizations of labor, in the performance of their duties, shall not be subject to injunction proceedings, passed the Senate in 1896. Another, which passed the Senate in

1897, provided for trial by jury in contempt proceedings for violation of an injunction. The third bill, which was introduced in the Senate in 1896, was most satisfactory to the Federation. The provisions of this bill made it unlawful for any court to issue a restraining order against any labor organization, its officers or members, in any manner affecting their full freedom peacefully to quit the service of any person or corporation at any time.

This is not the place to discuss how far the courts have given the workmen just ground for suspicion. The wisdom of the recent use of the injunction in labor disputes—at best a remedy of doubtful efficacy—is open to serious question, however, on the broader ground of public policy. Want of confidence in our government among a large class of the community, were it allowed to become permanent, might prove a grave danger to democratic institutions.

The preceding discussion of the activity of the American Federation of Labor in securing state interference in the form of labor legislation suggests the questions of the relation of the Federation to political parties and to socialism. The Federation has constantly refused to commit itself to any political party. There is an obvious distinction between this special form of political action and political action in the sense of the promotion of any legislation which the working class desire. The Federation, standing not for political but for industrial unity, takes the same position in regard to current political questions as any other business organization. It recommends its members to cast their votes, inde-

pendently of party, for the candidate who is most likely to promote their interests. Twice, however, the Federation has, by implication, given its support to a political party. The platform adopted by the first convention in 1881 contained a plank in favor of "full protection to American industry," but the next convention almost unanimously repealed this provision, and issued a manifesto discountenancing political action by trade unions. As early as 1893 the Federation declared itself in favor of the free coinage of silver at the ratio of sixteen to one. When in 1896 the question of free coinage became a sharply defined party issue, the Federation reaffirmed its position, with the qualification that it did "not in any degree endorse any political party that may have made free coinage a partisan political question."

Since 1890 some socialist members of the American Federation of Labor have worked persistently to secure its support for the principle of socialism, and for the Socialist Labor party. The resulting debates in the conventions of 1890 and 1894, which are printed in full, give an excellent idea of the attitude of trade union workmen toward socialism.¹ In 1890 the discussion turned on the proposed admission of a branch of the Socialist Labor party to membership in the Federation. By a more than three quarters vote, the Federa-

¹ (1) A Discussion at the Detroit Convention, 1890: Should a charter be issued by the American Federation of Labor to a Central Labor Union which has a Political Party represented therein?

(2) A verbatim Report of the Discussion on the Political Program, at the Denver Convention, 1894. Both pamphlets are published by the American Federation of Labor.

tion decided to adhere to the principle which it had always maintained, that it was an organization exclusively of trade unionists, and refused to admit socialist organizations as such. Individual socialists who are also members of trade unions, are never discriminated against.

In 1894 the Federation more decisively refused to commit itself to socialism. The socialist delegates urged the convention to adopt the political program which had just been adopted by the unusually radical British Trade Union Congress of 1893. A majority of the delegates to the Federation convention refused however to endorse the socialistic section of this program, which proposed "the collective ownership by the people of all means of production and distribution."¹ Two distinct arguments influenced this vote. One section of trade unionists oppose socialism in any form and feel that the powers of government should rather be restricted than increased. A considerable number of delegates who believed more or less vaguely in the principle of socialism, nevertheless voted against its endorsement by the Federation on opportunist grounds. Several trade unions had threatened to secede from the Federation if it considered such 'questions of a speculative character,' and these delegates felt that, in the present stage of the American labor movement, the preservation of a united trade unionism was of the first importance.²

¹The more recent British trade union congresses have not continued this declaration. Sixty-nine per cent. of the delegates of the congress of 1894 voted against it.

²Trade union workmen who are also socialists now take one of

three courses. Many continue as members of the trade unions and endeavor to win the Federation over to socialism. Since 1890 this group has been represented by from one-third to one-fifth of the delegates in the conventions. Others believe that the best interests of trade unionism demand that for the present, at least, it should not concern itself with socialism. A third group of more dogmatic socialists join a branch of the Socialist Trades and Labor Alliance, which was founded in 1895 under the auspices of the Socialist Labor Party. This organization, while numerically insignificant, (it claims a total membership of but thirty thousand), nevertheless brings another element of discord into the labor movement by its bitter opposition to the old trade unions, which it was designed to supersede.

V.

CONCLUSION.

Although the chief object of the foregoing account has been to give a clear picture of the working of the chief American labor organization, and through this, of the way of thinking of American workingmen, a few words as to the future may not be out of place. One feels diffident in assuming the role of prophet, especially in regard to such uncertain institutions as labor organizations; yet it is precisely the question of what part American labor organizations will play in the future which lends the chief interest to such an inquiry as this. For the immediate future, two questions are of first importance: Are American workingmen likely to become socialists? and, will the Federation prove less ephemeral than the similar labor organizations which it has superseded?

The experience of Germany, France, Australia, and recently even of England, all point to a strong tendency among workingmen of these countries to unite in a workingmen's party based on the principles of socialism. The workmen of the United States, on the contrary, have been looking almost exclusively to trade union action as the chief means of improving their condition. I use the term trade union action to include collective bargaining, the use of the union label, and the promotion of labor legislation, but to exclude the formation of a distinct workingmen's party.

The majority of trade union workmen have clearly refused to throw in their lot with the Socialist Labor Party. Believing with president Gompers that the trade union is the historic and natural form of working-class organization, they resist any such rival method of organization, certain to disrupt the unions. This feeling of resistance toward the Socialist Labor Party is intensified by the bitter opposition of the party leaders to the trade unions. The American workingman is above all things a 'practical' man. He is little influenced by the theoretical considerations of socialism, and chooses that form of organization which will accomplish something for him at once. Trade unions prosper, then, because workmen believe that they produce immediate practical results in the shape of favorable legislation, shorter hours, and better pay.

On the other hand, the Socialist Labor Party represents a movement among a small minority of our workmen, less than one per cent. of the voters in the United States, in favor of Marxian socialism. A true estimate of the present status of socialism in the United States must also recognize the widespread, though vague, element of socialistic ways of thinking which is creeping into the minds of people who are by no means avowed socialists.

The most significant feature of the recent trade union movement is the rapidly increasing influence of socialism. It is true that socialists are still in a minority in the Federation; but before 1890 socialism was scarcely considered in the conventions, and the social philosophy on

which the policy of the Federation was then based was much more akin to the individualist philosophy of the American employer than to socialism. The increasing feeling of unrest among American workingmen has indeed begun to assume a political aspect which is expressed in certain demands of the Populist Party and of the Socialist Labor Party. Yet it can safely be said that the majority of workingmen of this generation will hold aloof from any socialist party for two reasons already mentioned. Some fear that such a party would weaken the influence of trade unions, and others are opposed on principle to any considerable extension of the functions of the state.

Any judgment of the future of the trade union movement in the United States, based on its past history, must be tempered by the consideration that in many trades the movement is still in an early stage of development. American trade unions have much greater obstacles to successful organization to overcome, than English trade unions to-day. The wide expanse of territory in the United States, the large number of American workmen who frequently move from place to place, the extreme race differences among the workmen—many of whom know nothing of working class organization—all make comprehensive trade union organization peculiarly difficult. In the face of such obstacles it is not surprising that the American trade union movement, as a whole, is still in an uncertain stage. These general difficulties, and also the existence of the powerful

rival organization of the Knights of Labor, have retarded the growth of the American Federation of Labor.

There are several reasons why this Federation may endure. The continued success of the similar institution of the British Trade Union Congress since 1868 augurs favorably for the future of the Federation. In its early years the Federation followed the model of the Congress very closely, and like it, confined its activity to the promotion of labor legislation. As the Federation won the confidence of the trade unions, however, it gradually extended its activities in the endeavor to make itself more helpful, and therefore more indispensable to the unions. It did what it could to guide their development ; it lent a hand in the administration of the boycott and of the union label ;¹ it levied contributions for the support of the eight-hour strike of 1890 ; and it assumed the leadership of the eight-hour movement in the United States. While moderately extending its powers, the Federation has always used great caution, however, in first obtaining the general consent of the trade unions. Because of the greater scope of its activities, the Federation to-day exercises a somewhat greater power of leadership than the British Trade Union Congress.

The form of organization of the American Federation of Labor is excellently adapted to a combination of national trade unions. In return for slight sacrifices—either of money contributions or of independence—from the unions, it renders great benefits. One can but ad-

¹ The trade union label is wholly of American origin. It was first discussed at the British Trade Union Congress in 1893.

mire the persistency with which the Federation has refused to swerve from its central purpose, the advancement of a more permanent unity in the trade union world. It has never extended its powers unduly, either by encroaching on the rights reserved to its units, or by involving itself in politics.

Another element of permanence in the Federation is the number of more experienced labor leaders in its councils. Some of these leaders have been men of great executive ability, such as Mr. Strasser who, as president of the Cigar Makers' Union, built up in this union a system of insurance under which over three million dollars has been paid out in benefits. Experience has made most of these leaders relatively conservative, and they exercise a strong steadying influence on the development of the Federation. Largely owing to their influence, the Federation has avoided the three chief mistakes which led to the downfall of its predecessors,—secrecy of organization, over-centralization of power, and political action.

The most hopeful sign for the future of the Federation, however, is the large degree in which it enjoys the confidence of the working class. Workmen naturally look to the organization which has already done much to bring order into the American trade union world, to advance the movement for shorter hours, and to secure important labor legislation, for similar help in the future. It is to the American Federation of Labor that many workmen also look for leadership and assistance in the difficult work of organizing unskilled and women work-

ers, and of meeting the problem of the 'unemployed.' Its prospects of growth and success are hence good, even though not secured beyond peradventure, and it is likely to remain for a long time to come a factor of great weight in the industrial world.

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THE HOUSING OF THE WORKING PEOPLE IN YONKERS.

BY

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I.

INTRODUCTION.

The subject of the housing of the working people has already received considerable attention in the United States, as well as abroad. The Commissioner of Labor at Washington has published two bulky volumes on the subject, as has also the Massachusetts bureau of statistics, while for New York the report of the tenement house committee of 1894 has furnished all students with a fund of valuable material. In addition to these official investigations of the subject there is an enormous quantity of literature bearing on the problem, in books, pamphlets and periodicals. But all of these deal, almost without exception, with the question as it is presented in the large centers of population, especially in New York, Chicago, Philadelphia, Boston and Baltimore. It is undeniable that the problem is gravest in these cities, that the pressure of the population is severest, and that the evils of the tenement house system, with its attendant unsanitary conditions and overcrowding, are most deplorable in them ; but there is danger that in the desire for large results the smaller towns may be altogether overlooked. And yet the problem of the better housing of the working people exists in the small towns and villages just as certainly as in the larger cities. So far as the writer is aware, no presentation of the facts as they exist in our small manufactur-

ing towns has been made, and it is to help fill this gap in the literature of this subject that the present paper has been written. Owing, however, to the lack of official statistical material and absence of records on the subject made by the city of Yonkers, the picture here presented cannot lay claim to completeness, although it is believed to be fairly typical.

Yonkers is a prosperous manufacturing town on the banks of the Hudson, adjoining the northern boundary of Greater New York. Its history dates back to ante-revolutionary times, but it is only during the latter part of this century that its growth has been marked, the population having increased from 4,000 in 1850 to 40,000 in 1897. In 1872 it was incorporated as a city, having at that time a population of about 18,000. The city is rather sharply divided into a residential part, which is occupied principally by persons doing business in New York City, and a manufacturing portion where the industries of the place are carried on, and the working population is housed. By far the largest part of the population—perhaps two-thirds—is composed of those usually called the laboring class; the census of 1890 gave 11,303¹ as the number engaged in manufactures and industries in Yonkers. Of these 5,132 or almost half were engaged in the manufacture of carpets and hats, the three carpet mills in the place furnishing employment to about 4,000 persons, while about 1,200 were engaged in the three hat shops. The other principal industries are an elevator works, sugar refinery, silk factory, etc.

¹ Census 1890, Manufacturing Industries, Pt. II, Statistics of Cities, pp. 630, 631.

The population of Yonkers, as might be expected of a manufacturing town in such close proximity to New York, shows a large admixture of foreigners. In 1890, 34.14 per cent¹ or more than one-third of the entire population was returned by the Federal Census as foreign-born, against only 26.14 per cent in Westchester county. If we compare Yonkers with the other cities in New York state, we find that it ranks fourth in this respect, New York City being first with a percentage of 42.23 Long Island City is second with 36.67 per cent, and Buffalo third with 35 per cent. After Yonkers follow in order: Brooklyn (32.46 per cent), Rochester (29.71 per cent), Troy (28.32 per cent), Utica (26.74 per cent), and Syracuse (25.35 per cent). Of the population of Yonkers, 69.74 per cent, or more than two-thirds, were of foreign parentage—a very large proportion.

From a sanitary standpoint, Yonkers, like so many other American towns, is suffering now from neglect in the past; but of late years there has been a marked improvement in this respect. In the administration of the city government the number of departments and officials entrusted with the enforcement of sanitary regulations has been greatly increased. At the same time the number of public buildings erected for the same purposes has grown; among them is a free public bath, opened on Labor Day, 1895, Yonkers being the first city in the state to avail itself of the privilege conferred by act of legislature in that year.² Some of the other improve-

¹ U. S. Census, 1890, Vol. on Population, Pt. I, p. xcii.

² A second free public bath was built by the city during the summer of 1898.

ments made are the following : The appointments of a building inspector, a commissioner of public works, a medical inspector, a milk inspector, and two sanitary inspectors ; the building of a city hospital for contagious diseases, as well as two or three large private hospitals and of a garbage crematory ; the opening of a sterilized milk dispensary, and a public park, and a rapid extension of the sewers and asphalt streets in the city. A new sanitary code has also been enacted by a very efficient and energetic board of health. Each of these acts was a step in the gradual establishment and enforcement of stricter sanitary regulations and of a higher standard of health, and their combined effect is seen in the reduced death-rate. The decrease in the annual death-rate is especially marked in the last few years, having fallen from 23.33 per thousand inhabitants in 1892 to 17.97 in 1897. This may be seen in Table I, where the population and the annual death-rate are given for the past twenty years.

In addition to these official acts, the Woman's Civic League, established in 1895, has been very energetic in securing the enforcement of existing ordinances. It may, therefore, be fairly asserted that Yonkers as a town is progressive, and is not lacking in civic spirit. Whether the improvement in the housing conditions of the working people has kept pace with the general advance, we shall endeavor to determine.

Before taking up this specific phase of the housing problem, it will be well to ascertain the general position of Yonkers as a whole in comparison with other cities, and to note what provision has been made for its people in the way of providing them with homes.

TABLE I.—Population and Death Rate.¹

Year ending	Population.	Number of deaths.	Annual death rate per 1,000 inhabitants.	Children under 5 years.	
				Number of deaths.	Annual death rate.
Dec. 31, 1878.	18,500	271	14.22	111	6.00
" 1879.	18,750	287	15.10	112	5.90
" 1880.	18,892	269	14.01	113	5.90
" 1881.	20,000	379	18.90	151	7.55
" 1882.	21,000	398	18.90	179	8.50
" 1883.	22,000	405	18.40	150	6.80
" 1884.	23,000	350	15.20	132	5.70
" 1885.	24,000	450	18.70	186	7.75
" 1886.	26,000	512	20.00	229	8.80
" 1887.	27,500	498	18.10	216	7.85
" 1888.	30,000	568	19.00	250	8.30
" 1889.	31,000	540	17.45	193	6.20
" 1890.	32,033	588	18.36		
" 1891.	32,500	695	21.72	278	8.55
" 1892.	33,000	770	23.33	326	9.88
" 1893.	34,000	740	21.76	258	7.59
" 1894.	35,000	792	22.63	356	10.17
May 1, 1895.	36,012	811	22.52	317	8.80
" 1896.	38,165	781	20.55	357	9.39
" 1897.	40,000	719	17.97	316	7.90

TABLE II.—Increase in Population and Dwelling Houses.

Year.	Population.	Number of houses.	Individuals to a house.	Percentage of growth in	
				Population.	Houses.
1852 -----	5,000	537	9.50		
1884 -----	23,000	2,924	7.87	360.00	425.88
1890 -----	32,033	3,746	8.55	39.28	21.20
1897 -----	40,000	4,702	8.50	24.90	25.52

By comparing the growth of the population and of the number of dwelling houses, we can ascertain whether private enterprise has kept the supply of houses up to the needs of the population. We find that be-

¹ Annual reports of the board of health, Yonkers, 1878-1897.

tween the years 1884 and 1890 the population of Yonkers increased only 21.20 per cent, the supply of houses during this period increasing only about half as rapidly as the population. The result was that while in 1884 only 7.87 persons on an average lived in a house, in 1890 the number of persons to a house was 8.55. Between 1890 and 1897 there was a marked boom in the building trades in Yonkers and the number of houses more than kept pace with the increase in population; the population grew 24.9 per cent. and the number of houses 25.52 per cent. At the same time, and as a result of this, the number of persons to a house was reduced to 8.50. If we compare Yonkers with the United States as a whole and with the states in the North Atlantic division, we see that the comparison is not altogether a favorable one; Yonkers does not exhibit the same increase in the number of dwelling houses as other sections of the country, as the following table will show:

TABLE III.—Increase in Dwelling Houses, 1880–1890.¹

	Number.	Percent.
United States.....	2,527,506	28.22
North Atlantic Division --	532,163	21.90
Yonkers.....	822	21.20

Inasmuch as the houses in the cities have been built higher and larger of recent years, in which respect Yonkers is no exception to the general rule, it is impossible to assert that the number of persons to a room has increased, although the number to a house has done so. It will probably be admitted, however, that it is desirable to provide, if possible, a house for every family, and judged by this standard, Yonkers falls behind. In

¹ Census of 1890, Volume on Population, p. clxxxviii.

the United States as a whole, we note constantly bettering conditions in this respect, that is, a constant decrease in the number of persons to a house, from 5.94 in 1850 to 5.45 in 1890. The exact figures are as follows :

1850 ¹	1860	1870	1880	1890
5.94	5.53	5.47	5.60	5.45

In Yonkers the figures are more variable. The number of houses in 1852 is given at 537² and the population 5,000, giving an average of 9.50 persons to every house. But it is very doubtful if these figures have any statistical value. In 1884 the average number of persons to a house was 7.87 ; in 1890, 8.55, and in 1897, 8.50. Between 1884 and 1890 there was therefore a continuous concentration of the population, since which time there has been a slight improvement.

If we compare Yonkers with the county, the state and the United States, we find that the comparison is greatly to its disadvantage, as the following table shows :

TABLE IV.³

	Persons to a house.	Persons to a family.
United States-----	5.45	4.93
New York state-----	6.70	4.59
Westchester county-----	6.29	5.19
Yonkers -----	8.55	5.26

Such a comparison is scarcely fair to the city, inasmuch as the averages of those districts which are largely agricultural are naturally very much lower than in

¹ In the years 1850 and 1860 only free population was counted, dwellings and families of slaves were not included. Census 1880, Volume on Population, p. 669.

² C. E. Allison's History of Yonkers, p. 267.

³ *Ibid*, p. 925.

the town ; in the country there is seldom more than a single family to a house, while in the city most of the houses harbor two or more families, so that the average to a house is higher there.

We shall obtain the best idea of the relation of the number of dwelling houses to the population, that is, of the concentration of the population, by comparing Yonkers with other cities in the United States in this respect. Of 124 cities given in the 11th Census as having a population of 25,000 or over in 1890,¹ only 9 of them had more persons to a dwelling house than Yonkers (8.55), namely, New York (18.52), Hoboken (12.80), Holyoke, Mass. (11.35), Fall River (11.20), Brooklyn (9.80), Cincinnati (8.87); Jersey City (8.78), Worcester, Mass. (8.65), Chicago (8.60) Yonkers, therefore, ranks *tenth* among the cities of the United States as regards concentration of population, though it ranks *ninety-third* as regards size. Further light is thrown on the position of Yonkers if we note the size of the families as given by the 11th Census. Family in the Census means all individuals or aggregations of individuals having the tie of a common roof and table, so that this comparison enables us to see in how far the concentration affects the family life. Of the same 124 cities given in the 11th Census, only *twelve* have more persons to a family than Yonkers. It will thus be seen that this town presents all the characteristics of the large cities and manufacturing centers, rather than those of rural communities and suburban towns. We shall, therefore, not be surprised to find here all the marks of the tene-

¹ Census, 1890, Volume on Population, p. cxc1.

ment house problem as they exist in the larger cities. This will be more evident if we compare Yonkers with the seven largest cities of the United States and see how it ranks with them in this respect.

TABLE V.—Number of Individuals to a House.¹

City.	Percent of houses occupied by				Percent of population in houses with				Total.
	1 person.	2-6 persons.	7-10 persons.	11 or more.	1 person.	2-6 persons.	7-10 persons.	11 or more.	
New York----	1.29	26.45	22.44	49.82	.07	6.27	10.16	83.50	100.
Chicago-----	1.00	45.54	28.92	24.54	.12	22.85	27.85	49.18	100.
Philadelphia---	1.15	69.94	24.52	4.39	.20	51.75	35.26	12.79	100.
Brooklyn ----	.97	39.30	30.08	29.65	.10	17.83	25.42	56.65	100.
St. Louis -----	2.46	49.77	31.31	16.46	.33	28.54	34.87	36.26	100.
Boston -----	1.19	44.18	30.40	24.23	.14	22.35	29.71	47.80	100.
Baltimore ----	1.09	62.22	30.10	5.89	.18	44.31	41.37	14.14	100.
Yonkers-----	1.25	41.97	33.05	23.73	.15	21.53	32.39	45.93	100.

Although it has a population less than one-tenth that of the smallest of the others—Baltimore,—we find that Yonkers may be ranked in about the middle of these cities. Taking the number of persons to a house as the standard, five of them show a greater percentage of houses containing 1 to 6 persons, while only two—New York and Brooklyn—have a larger proportion of houses harboring more than 6 persons; in only four cities is the proportion of houses containing 11 or more persons greater than in Yonkers. Almost half of the population of Yonkers, or 45.93 per cent, live in houses where 11 or more persons dwell. The meaning of these figures is sufficiently obvious not to need further analysis or

¹ 22nd annual report of the Massachusetts bureau of statistics of labor, A Tenement House Census of Boston, (Boston, 1891), p. 550.

explanation. The major part of the population of Yonkers live in houses which may fairly be designated tenement houses.

A careful examination by Dr. S. E. Getty of some thousands of birth certificates in Yonkers, led him to state that 16 per cent.¹ of the births occurred in single houses, 24 per cent. in flats and 60 per cent in tenement houses. This result but serves to substantiate what we had already inferred from the tables given, namely, that there is a large tenement population in Yonkers and that the problem of their better housing is as actual and pressing as in the larger cities. But to show this a detailed analysis of conditions there is necessary, to which we now turn.

¹ Dr. S. E. Getty, *Pasteurized Milk as a Means of Saving Infants' Lives*, p. 12.

II.

INVESTIGATION IN YONKERS.

The endeavor so far has been to show the general position of Yonkers, as regards the housing of its population, in comparison with other cities in the United States, with the help of such data as are available. It is impossible to do so in detail for the whole city, and to give such a picture of conditions in Yonkers as is afforded of New York, for instance, by the tenement house committee's report in 1894, for the simple reason that no official investigation has ever been made in this city, and that no material exists such as they had to draw on. For over a year, however, statistics concerning the condition of the laboring people of the city have been gathered privately under the direction of Miss Mary Marshall Butler, president of the Woman's Institute, and Mrs. William Sharman, secretary of the Civic League. Through their influence a woman inspector had been appointed by the board of health to coöperate with the League in investigating the sanitary condition of houses in the tenement districts, and cards containing valuable social statistics were filled out by her at the same time that she made the sanitary reports. The material so gathered was kindly placed at the disposal of the writer by Miss Butler, and forms the basis of the following article.

THE STREETS.

In this investigation those streets were selected for report which were occupied by the working people—factory operatives, etc.—and in which the houses were

principally of the tenement house order. Of slums, strictly speaking, there are none in Yonkers. The work was begun in March, 1896, and has been continued since that time until August, 1897, with some unavoidable interruptions. In this period 587 houses have been visited, containing almost 1,400 families, with a population of over 6,500 persons, or one-sixth of the total population of the city. The following table (VI) gives in detail the number of houses, families and persons, the latter being classified as adults and children belonging to the family, and lodgers. The extent of the investigation entitles it to respectful consideration, as thoroughly representative of conditions in Yonkers.

TABLE VI.—Extent of Investigation.

Street.	Ward.	Number of houses.	Number of families.	Number of Rooms.	Number of persons.			
					Adults.	14 years or under.	Lodgers. ¹	Total.
Clinton.....	I	66	167	624	403	215	202	820
St. Mary.....	I, IV	3	9	39	23	7	3	33
Washington ..	I, IV	32	100	394	240	135	71	446
James.....	II	14	27	108	64	35	6	105
John.....	II	7	11	46	29	20	3	52
Elm.....	II, V	9	14	64	40	20	9	69
Palisade.....	II	65	182	877	500	310	70	880
Carlisle.....	II	16	45	186	116	64	5	185
Garden.....	II	63	165	660	417	294	13	724
Mulford.....	VI	42	93	390	270	129	5	404
Parker.....	VI	31	54	257	168	104	3	275
Orchard.....	VI	68	183	813	502	261	102	865
Vineyard.....	VI	87	173	852	495	306	56	857
New School....	V	12	48	184	111	123	19	253
School.....	V	46	86	453	258	114	13	385
Webster.....	V	26	37	225	103	60	3	166
Total.....		587	1394	6172	3739	2197	583	6519
Percentage ..					57.35	33.71	8.94	100.

¹ The lodgers were all over 14 years of age.

Statistics were gathered from some sixteen typical streets, lying in different parts of the city, and in five out of the seven wards; no investigation was made in either the 3rd or 7th wards, the first of these comprising the finest residential part of the city, and the other being a large, very sparsely populated tract of land outside of the city proper. The streets may be divided into the following groups: Clinton, St. Mary's and Washington, comprising the "Flats", inhabited by a large foreign, chiefly Slavish element, most of whom find work in the neighboring hat shops; James and John streets, two short alleys, are the home of the Negro colony; Elm and Palisade avenues are in the business portion of the city and harbor a mixed population; Carlisle, Garden, Mulford, Parker, Orchard streets and Vineyard avenue are almost exclusively occupied by Irish—Garden street runs through the "Glen" and the last four streets comprise "Hog Hill", names which fittingly characterize the localities; New School and School streets and Webster avenue have been chiefly sought out by the American born population, though in the first mentioned street there is a small Italian colony.

III.

NATIONALITY AND OCCUPATION.

Before proceeding to the investigation of the tenements it will be well to analyze more closely the population under consideration, with respect to their nationality, occupation and length of residence in Yonkers, in order to obtain a clearer idea of the people with whom we are dealing. The statistical presentation of these facts follows in tables VII, VIII, and X. Table VII exhibits the nationality of the heads of families, by streets.

It is seen at once that by far the larger part of the number given is foreign born. Of these, more than half, or fifty-one per cent were born in Ireland. The natives of Germany rank next in number, the percentage being 6.9; following these come the Hungarians, negroes and natives of Great Britain. The other Slavonic nationalities follow in order, aggregating altogether over eleven per cent of the total. The Latin nations are represented by only a very small percentage (2.8) of which the Italians make up considerably more than half, while 9 nationalities are represented in the families classed as "other nationalities," but such nationalities, considered separately, form only an insignificant fraction of the whole, in no case more than .5 per cent.

Persons of native birth form but a small proportion of the families under consideration, only 15.7 per cent being classed as Americans. This is an even smaller percentage than exists in the city at large, as given by the 11th Census,¹ according to which 30.3 per cent of

¹ Volume on Population, p. clxiii.

TABLE VII.—Nationality of Families.

Street.	American.	German.	Irish.	English.	Scottish.	Hungarian.	Russian.	Polish.	Slovak.	Italian.	Greek.	French.	Nine other nationalities.	Colored.	Unspecified.	Total.
Clinton	6	18	43	---	---	33	26	7	12	2	8	1	2	---	9	167
St. Mary	---	2	4	---	---	2	---	1	1	---	---	---	---	---	---	9
Washington	12	8	22	---	1	12	3	8	24	---	2	1	1	---	6	100
James	---	2	1	---	---	---	---	---	---	---	---	---	---	24	---	27
John	---	1	---	---	---	---	---	---	---	---	---	---	---	10	---	11
Elm	1	2	4	---	1	---	---	1	1	---	---	---	---	4	---	14
Palisade	50	27	60	18	1	1	1	---	2	1	---	1	4	15	1	182
Carlisle	14	1	26	---	2	---	---	---	---	---	---	---	2	---	---	45
Garden	31	4	11	11	2	---	---	2	---	---	---	2	2	---	---	165
Mulford	7	3	80	1	---	1	---	---	---	---	---	---	---	---	1	93
Parker	2	---	51	1	---	---	---	---	---	---	---	---	---	---	---	54
Orchard	5	1	151	3	---	14	---	9	---	---	---	---	---	---	---	183
Vineyard	15	12	129	3	3	4	3	1	1	---	---	---	1	1	---	173
New School	10	5	8	1	---	---	---	1	---	21	---	---	1	---	1	48
School	47	8	12	9	---	---	---	---	---	---	---	---	5	3	2	86
Webster	18	3	9	3	1	---	---	---	---	---	---	1	1	---	1	37
Total	218	97	711	50	11	66	34	29	41	24	10	6	19	57	21	1394
Percentage	15.7	6.9	51.0	3.6	0.8	4.8	2.4	2.1	2.9	1.7	0.7	0.4	1.4	4.1	1.5	100.

¹ Without being more closely specified.

the total population is native born. It is thus seen that persons of foreign parentage are largely in excess in the districts selected for investigation, the proportions being 84.3 per cent and 69.7 per cent in the selected districts and the whole city respectively. This only ex-

emplifies a fact which has been met with in all similar investigations, namely, that the tenement population is made up almost entirely of persons of foreign birth or parentage, or at least contains a larger proportion of such persons than the city at large. An investigation¹ by the U. S. Commissioner of Labor into the slums of New York, Chicago, Philadelphia and Baltimore shows such results in each case. The proportion of persons of foreign parentage in the slum districts for each of the cities is as follows: New York, 95.2 per cent; Chicago, 90.1 per cent; Philadelphia, 91 per cent; and Baltimore, 76.5 per cent. Taking into consideration the whole population of each of the four cities, New York shows 80.5 per cent; Chicago, 77.9 per cent; Philadelphia, 56.6 per cent, and Baltimore, 41.7 per cent. Only one of these cities—Baltimore—shows a relatively smaller foreign slum population than Yonkers, while two of them—Philadelphia and Baltimore—show a smaller proportion of persons of foreign parentage in the total population.

It would be interesting to compare the nationalities in the streets named with the same nationalities for the whole city, but no such data were obtainable, as the census of 1890 does not give the desired information for Yonkers. The most surprising fact about the table is the very large proportion of Irish, who make up more than half of the total number. This is because a number of the streets selected for investigation are almost entirely occupied by this nationality, and is probably

¹ 7th Special Rep. of the U. S. Commissioner of Labor, *The Slums of Great Cities*, (1894,) p. 44.

not indicative of their number in the city as a whole. The percentage of persons of Slavonic nationality is noticeably large. Most of these have come to the city in recent years, attracted there by the opportunity of work in the factories. The Italians, too, are a recent accretion and have been brought there largely to assist in the various building operations and other improvements which have been extensively carried on in the past few years.

In compiling the tables the attempt has been made to group the streets together, according both to their situation and to the predominant nationality in each. A closer inspection of Table VII will make this apparent. It may seem that a tabulation of the statistics presented in this article, according to nationalities, would be of more value than the system which has been followed, but for the immediate, practical purposes, which were the motive of the investigation, a tabulation by streets appeared more desirable, and was therefore adopted.¹

In Table VIII are presented the occupations of all adults, that is all individuals over 14 years of age, the number of whom is given in Table VI as 4,322.²

In general the classification adopted by the Federal Census has been followed, but certain groups have been kept separate which seem to have a special signifi-

¹ It may be of interest to note the church relations of families in connection with their nationality. Those connected with the Roman or Greek Catholic church comprised almost three-quarters of all, or 73.1 per cent. Protestants were 18.2 per cent; Hebrews, 6.1 per cent; while 1.6 per cent were not specified.

² See p. 284.

TABLE VIII.—Occupations of Adults.

Street.	Carpet manufac- ture.	Hat manufacture.	Other manufactures	Trade and Trans- portation.	Day Labor.	Domestic and per- sonal service.	Professions	Saloon keeping.	Housekeeping.	Unemployed.	Unspecified.	Total.
Clinton-----	38	209	5	48	73	16	4	4	167	---	41	605
St. Mary-----	3	10	---	1	---	1	---	2	9	---	---	26
Washington-----	20	45	12	31	9	10	4	4	100	8	65	311
James-----	---	---	5	9	5	18	---	---	27	2	4	70
John-----	---	---	3	1	6	6	---	1	11	1	3	32
Elm-----	4	5	4	5	---	7	---	---	14	6	4	49
Palisade-----	74	23	55	79	8	30	6	2	182	15	101	570
Carlisle-----	14	7	10	12	3	5	2	1	45	10	12	121
Garden-----	98	13	23	35	39	20	2	4	165	25	6	430
Mulford-----	50	5	20	27	31	15	---	2	93	12	20	275
Parker-----	39	4	6	19	17	5	1	2	54	2	22	171
Orchard-----	246	34	13	53	49	21	2	2	183	---	1	604
Vineyard-----	159	12	23	51	42	22	5	4	173	6	54	551
New School-----	10	21	5	21	8	5	---	1	48	10	1	130
School-----	11	19	7	39	4	6	2	---	86	4	91	271
Webster-----	20	7	3	26	2	6	1	---	37	3	1	106
Total-----	786	414	194	457	296	193	29	29	1394	104	426	4322
Percentage-----	18.2	9.6	4.5	10.5	6.8	4.5	0.7	0.7	32.3	2.4	9.8	100.

cance in this investigation, and which would have been lost if included in the general class. Unfortunately no mention was made on the cards from which the table is compiled of those engaged in housework, so the rather arbitrary plan was adopted of allowing one housewife to each family, the number being therefore 1394 or 32.3 per cent of the total number of adults.

Perhaps the most striking fact about the table is the large percentage of those engaged in manufactures, 32.3 per cent of all, or, disregarding those engaged in housework, almost half of all those working at gainful pursuits. The same proportion holds good for the whole city, in spite of the fact that several of the select-

ed streets lie in close proximity to the most important factories, for the census of 1890 gave 45.4 per cent of the 11,303 employees in the city as engaged in the manufacture of carpets and hats alone. The majority of those employed in the hat factories live in Clinton, St. Mary and Washington streets, near which they are situated. Mulford, Parker and Orchard streets and Vineyard avenue are near the "Moquette" carpet mills, while Palisade, Carlisle and Garden streets are near the "Upper" factory on Palisade avenue, so that a large part of the inhabitants of these streets find employment in the carpet factories. The next largest group is made up of those engaged in trade or transportation, numbering 457 persons or 10.5 per cent of all. Next in point of size are the groups of laborers and those engaged in domestic and personal service; the group of unskilled day-laborers seems a very large one even for the tenement house population, comprising as it does 6.8 per cent of all. Curiously enough the number of those engaged in professional service and of those who work in saloons is exactly the same, though the number of the latter by no means indicates the number of saloons in these streets, of which there is a much larger proportion. The unemployed comprise but 2.4 per cent of the total, a percentage much below that found to obtain in other places. Unfortunately it is not possible to specify the length of time during which the 104 individuals tabulated were without work, but the figures are presented for what they are worth.

A comparison of the occupation of the inhabitants of the districts under consideration with those of the popu-

lation of the city at large would be of interest, but cannot be made as the census for 1890 does not give the desired information for Yonkers. The results obtained may, however, be compared with similar¹ figures from the tenement districts of five other cities, which are presented in the following table:

TABLE IX.—Percentage of Individuals in Industrial Groups.²

Occupations.	New York.	Chicago.	Philadelphia.	Baltimore.	Boston.	Yonkers
Agriculture, fisheries and mining -----	.10	.05	.08	.42	.41	.09 ⁵
Professional -----	.90	.96	.89	.62	2.89 ³	.67
Domestic and personal service -----	13.46	14.29	11.56	11.26	10.15 ⁴	11.32 ⁴
Trade and transportation.	10.91	11.29	11.15	10.26	13.22	11.25
Manufactures and mechanical industries -----	15.04	14.69	17.27	16.52	13.65	32.25
Non-productive (not gainful) -----	57.12	57.04	57.46	58.77	-----	-----
Housewives and all others -----	-----	-----	-----	-----	59.57	44.42
Housewives and at work -----	2.19	.89	1.42	2.13	-----	-----
Scholars and at work -----	.28	.79	.17	.02	.11	-----
Total -----	100.	100.	100.	100.	100.	100.

There is, in all the cities, a rough agreement in the distribution of individuals among the various industrial groups, the only noteworthy variation being in Yonkers. Here the percentage of those engaged in manufactures is much larger than the percentages for the

¹ See note 4 on page 302.

² Seventh Special Report of the United States Commissioner of Labor, *The Slums of Great Cities*, (Washington, D. C., 1894,) p. 52; 23rd annual report of Massachusetts bureau of statistics of labor, *A Tenement House Census of Boston*, (1892,) p. 314.

³ Professional and government service.

⁴ Including laborers.

⁵ Included under "unspecified" in Table VIII.

same occupation group in other cities, while the number engaged in housework is correspondingly smaller.

Table X. shows the length of time during which families have resided in Yonkers.

TABLE X.—Length of Residence in Yonkers.

Street.	Less than one year.	1-2 years.	2-5 years.	5-10 years.	10-20 years.	20-30 years.	30-40 years.	40-50 years.	50 years or over.	Unspecified.	Total.
Clinton	1	23	60	37	23	5	7	8	1	2	167
St. Mary			2	3	1	2	1				9
Washington	3	9	17	30	14	8	9	6		4	100
James	2		3	6	9	2	3	2			27
John			1	4	2		1		1		11
Elm	1	1	2	2	5	2	1				14
Palisade	12	6	18	29	55	31	11	5		15	182
Carlisle	3		3	9	16	6	5		1	2	45
Garden	6	3	12	30	42	29	31	11	1		165
Mulford	4	5	6	6	26	8	18	14	2	4	93
Parker	2		3	3	16	5	13	10	1	1	54
Orchard	3	1	22	39	60	28	23	7			183
Vineyard	11	2	20	36	46	20	27	9	2		173
New School	2	2	11	12	14	4	2	1			48
School	2	6	12	6	23	14	13	6	3	1	86
Webster			2	8	12	11	2		1	1	37
Total	52	58	194	260	364	175	167	79	13	32	1394
Percentage	3.7	4.2	13.9	18.7	26.1	12.6	11.9	5.7	0.9	2.3	100.

From this table we see that 60 per cent of the families have resided in Yonkers for a period of ten years or longer, while only 8 per cent have lived there less than two years. That is to say, the population under consideration, and presumably that of the entire city, is a stable one. More than half of those who have come to the city within the past two years are residents of Clinton and Washington streets and probably belong to the

Slavonic population, which has increased rapidly in the last few years. The stability of the population, that is their continued residence in Yonkers, has one important practical bearing, namely that an assurance is thereby given that any improvements initiated for the benefit of the working people will undoubtedly inure to the benefit of those for whom they were designed.

IV.

THE DWELLINGS.

NUMBER OF TENEMENTS AND PERSONS TO A HOUSE.

The prevailing type of house in Yonkers in which the working people make their homes is a two or three story frame tenement house. Of the 4,700 houses in the city about 3,700 are built of wood, the remaining 1,000 being almost all of brick. The great majority of the 587 houses investigated were of a severe, square, box-like type, without the slightest pretension to beauty or individuality, and the view of the streets in which they are situated is depressing in the extreme. The environment of most of the working people of Yonkers, while doubtless better than that of similarly situated persons in the large cities, is extremely unlovely and cannot be considered elevating or inspiring. This is the more regrettable inasmuch as the situation of the city offers distinct inducement to the building of picturesque small cottages.

A considerable number of houses are occupied by single families and such conditions are presumably of the best, so far as they can be ensured by detachment of residence. Families occupying two-tenement houses live under conditions considerably inferior to those enjoyed by the occupants of detached houses. Most of the houses in Yonkers which contain two families, were originally built for but a single household, so that the stairways must be used in common and no considerable degree of privacy is possible. The family on the upper

floor generally converts the room at the back, originally designed for a bed-room, into a kitchen. Toilet accommodations, etc., must of course be used in common. This is the character of the majority of the older two-tenement houses. Some of the newer ones are built on the "flat" order, the tenements having separate corridors opening from the common entrance; some few have an outside stairway to the upper tenement. The occupants of such houses have substantially as much privacy as those occupying a single house. Houses containing three or more tenements are built, almost without exception, on the typical tenement house plan, with common entrance and stairway and enclosed verandas leading to the fire escape at the back. Some few are built on the "flat" arrangement and offer an opportunity for some degree of home life, but the great majority are of the order described. The following table exhibits the number of houses, by tenements to a house, and the number of families and individuals occupying houses with the specified number of tenements.

TABLE XI.—Families and Persons in Houses, with Specified Number of Tenements.

Tenements to a house.	Number of houses.	Number of families.	Number of persons.	Average number persons to a house.	Average number persons to a tenement.
1 Tenement..	203	203	1004	4.94	4.9
2 Tenements..	165	330	1552	9.41	4.7
3 Tenements..	125	371	1739	13.91	4.6
4 Tenements..	51	204	966	18.94	4.7
5 or more----	43	286	1258	29.25	4.4
Total-----	587	1394	6519	11.10	4.67

Of the 587 houses investigated, 203, or over one-third, have but a single tenement to the house, that is the entire house is occupied by a single family, though in several cases a part of the building is used as a store. Fourteen and five-tenth per cent of all the families, comprising 15.4 per cent of the population, live in houses containing a single household. This percentage probably holds good for the city as a whole, as well as for the selected streets. Houses with two dwellings make up the next largest group, namely, 165 or 28.1 per cent, in which live 23.7 per cent of the families and 23.8 per cent of the population. Together these two groups comprise over 60 per cent of the houses and almost 40 per cent. of the population. The largest percentage of the population, 26.6, live in houses containing three tenements, though the absolute number of houses is naturally much smaller. If we define a "tenement house" as every house in which three or more families live independently of one another, we find that somewhat less than 40 per cent of the houses are of this character. More than 60 per cent of the population live in such tenement houses, according to our investigation, a figure which corresponds exactly with conclusions reached from figures for the whole city. Such houses are naturally more densely populated than others, the average number of persons to a house with three or more tenements being 18.1 as against 11.1 for all houses included in this investigation and 8.5 for the city at large.

If we note more in detail the number of persons to a house, arranged according to the number of tenements

to a house, we find an enormous concentration in each house as the number of tenements to a house increases. While in single houses the average number of persons to a house is only 4.94, it more than doubles when the number of tenements is doubled, being 9.41 to a two-tenement house. For a house with three tenements, the average number of persons is 13.91, with four tenements 18.94, while in all houses containing five or more tenements there live, on an average, 29.25 persons to a house. The concentration of population in such houses is quite as great in Yonkers as in the larger cities. They are, however, fairly scattered through the whole town, so that there are no really congested districts, or slums, as in New York.

In Table XII are presented the same facts in greater detail, namely, the number of families and persons occupying houses with the specified number of tenements, by streets, and the average number of persons to a house in each street.

The greatest absolute number of real tenement houses, that is houses occupied by three or more families, is found in Clinton street and Palisade avenue. The average number of persons to a house shows a wide variation, ranging from 6.4 in Webster avenue, where most of the houses are small detached cottages, to 21.1 in New School street, where are to be found typical city tenement houses built in rows and three or four stories in height.

If we compare the percentages obtained from Table XII with similar figures¹ from New York, Chicago, Phil-

¹ See note 4 on p. 302.

TABLE XII.—Number of Families and Persons to a House with Specified Number of Tenements.

Street.	1 Tenement.			2 Tenements.			3 Tenements.			4 Tenements.			5 or more.			Total.		Average number persons to a house.
	Fami- lies.	Per- sons.		Fami- lies.	Per- sons.		Fami- lies.	Per- sons.		Fami- lies.	Per- sons.		Fami- lies.	Per- sons.		Fami- lies.	Per- sons.	
Clinton	19	88		46	230		27	141		24	121		51	236		167	820	12.4
St. Mary	1	4		1	12								6	17		9	33	11.0
Washington	4	25		20	95		21	99		32	139		23	88		135	446	13.9
James	7	36		4	21		8	19		8	29					27	105	7.5
John	5	25		2	12					4	15					11	52	7.4
Elm	5	28		6	27		3	14								14	69	7.7
Palisade	14	107		33	147		63	299		20	90		52	237		182	880	13.5
Carlisle	3	7		6	26		23	106		4	19		9	27		45	185	11.5
Garden	21	83		26	111		57	252		24	116		37	162		165	724	11.5
Mulford	15	59		22	100		33	132		16	84		7	29		93	404	9.6
Parker	15	85		20	95		15	71		4	24					54	275	8.9
Orchard	17	84		36	167		51	247		40	207		39	160		183	865	12.7
Vineyard	39	204		54	270		42	225		12	38		26	120		173	857	9.9
New School	1	6		4	18		6	34		8	47		29	148		48	253	21.1
School	19	79		38	170		15	65		8	37		6	34		86	385	8.4
Webster	18	84		12	51		7	35								37	166	6.4
Total	203	1004		330	1552		371	1739		204	966		286	1258		1394	6519	11.1
Percentage	14.56	15.42		23.68	23.80		26.61	26.67		14.63	14.82		20.52	19.29		100.	100.	

adelphia, Boston and Baltimore, in all which cities we should expect to find the conditions worse than in Yon-

kers, at least as regards concentration of population, we obtain results not altogether in favor of this city. Table XIII shows the percentage of families and persons living in houses with the specified number of tenements.

TABLE XIII.—Percentage of Families and Persons in Houses with specified Number of Tenements.

Tenements to a house.	New York. ¹		Chicago. ¹		Philadelphia. ¹		Boston. ²		Baltimore. ¹		Yonkers.	
	Fami- lies.	Per- sons.	Fami- lies.	Per- sons.	Fami- lies.	Per- sons.	Fami- lies.	Per- sons.	Fami- lies.	Per- sons.	Fami- lies.	Per- sons.
1 Tenement---	1.84	7.69	9.53	11.73	53.91	60.97	16.49	22.38	36.25	43.12	14.56	15.42
2 Tenements--	1.73	1.92	16.13	17.36	17.87	15.69	27.03	26.36	25.70	23.12	23.68	23.80
3 Tenements--	3.01	2.95	12.39	11.85	12.86	10.95	30.49	28.47	12.46	10.62	26.61	26.67
4 Tenements--	4.70	4.70	15.98	15.08	5.73	5.10	10.06	9.01	8.29	7.15	14.63	14.82
5 or more-----	88.72	82.74	45.97	43.98	9.63	7.39	16.02	13.78	17.30	35.99	20.52	19.29
Total-----	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.

¹ Seventh Special Report of the Commissioner of Labor, The Slums of Great Cities, (Washington, D. C., 1894,) p. 86.

² Twenty-second annual report of the Massachusetts bureau of statistics of labor, (Boston, 1891,) p. 350.

Philadelphia, the city of small houses, shows the best conditions ; 55.91 per cent of all families in the slum district, or over one-half, comprising 60.97 per cent. of all individuals, live in houses of one tenement, that is, occupy the whole house. Baltimore follows with 36.25 per cent of all families, comprising 43.12 per cent of all individuals, in single houses. New York and Chicago alone show more crowded conditions than Yonkers, with 1.84 and 9.53 per cent of families respectively living under these conditions, as against 14.56 per cent for Yonkers. These same two cities are also the only ones which show a larger percentage than Yonkers of families living in houses of five or more tenements. We may, therefore, infer from these figures that the concentration of the population in few houses is greater in New York and Chicago, and less in Philadelphia, Boston and Baltimore, than it is in Yonkers. The greatest number of tenements to a house in this city was 15 in a tenement house on Garden street ; in the other cities the maximum number varied from 13 in Baltimore to 47 in Boston ; Philadelphia having 15, Chicago 24, and New York 29 tenements in a single house.

If we make the number of persons to a house the basis of still another comparison with other cities, we find again that Yonkers makes an unfavorable impression, only New York and Chicago, as before, showing more crowded conditions. The following table shows the average number of persons to a house both for the cities at large and for selected districts.

TABLE XIV.—Number of Persons to a House.

Cities.	City at large. ¹	Selected Districts. ²
New York -----	18.52	36.79
Chicago -----	8.60	15.51
Philadelphia -----	5.60	7.34
Boston ³ -----	8.52	8.58
Baltimore -----	6.02	7.71
Yonkers -----	8.55	11.10

There is, in each of the cities, invariably a larger number of persons to a house in the selected district than in the city at large.⁴

The differences in Baltimore, Boston and Philadelphia are not great, although noticable. In both columns Philadelphia has the smallest average. This, as is well known, is due to the large number of houses occupied by single families and owned by them, a condition fostered by the building and loan associations and the system of transportation in operation in that city. In

¹ Census of 1890, Volume on population.

² Seventh Special Report of the U. S. Commissioner of Labor, 1894, p. 86.

³ The average for the eleven most densely populated wards in Boston is 11.01 persons to a house, even this being below the average for Yonkers in the second column. Twenty-second annual report of Massachusetts bureau of labor statistics, 1891, p. 541.

⁴ The districts investigated in the cities of New York, Chicago, Philadelphia and Baltimore, "are among the worst in the cities, and may be denominated as the centers of the slum population." In Boston the inquiry included all "rented tenements" in the city, that is, "all places of residence hired or leased." The population canvassed in the five cities was as follows: New York, 28,996; Chicago, 19,748; Philadelphia, 17,060; Baltimore, 18,048; Boston, 311,396. The scope of the investigation in Yonkers has already been described. It will seem probable that the statistics here presented represent the worst conditions in the first four cities, average ones in Boston, and in Yonkers conditions fairly typical of the working people, though not of the slum element. These facts should be borne in mind when comparisons are made.

New York and Chicago the number of persons to a house in the slum districts is almost double that found in the whole city. In Yonkers the difference is not marked, although greater than in any of the other three cities.

V.

AVERAGE SIZE OF FAMILIES.

Another basis for determining the manner of living as respects crowding, is the size of the family, in the meaning of the term as used in the Federal Census reports.¹ This includes not only the actual family, but also boarders, lodgers and others living with them, considered as a unit.

From Table XV. we see what the distribution of families in the canvassed districts of Yonkers is :

TABLE XV.—Number of Families Consisting of specified Number of Persons.

Street.	1 Per-son.	2 Per-sons.	3 Per-sons.	4 Per-sons.	5 Per-sons.	6 Per-sons.	7 Per-sons.	8 or more.	Average number per-sons to a family
Clinton-----	3	28	25	20	31	22	12	26	4.97
St. Mary-----		2	3	2	1		1		3.66
Washington-----	6	9	23	17	15	14	10	6	4.46
James-----	2	8	3	4	3	4	1	2	3.89
John-----		3	1	1	2	1	1	2	4.73
Elm-----		3		3	1	4	2	1	4.93
Palisade-----	5	30	32	25	23	26	17	24	4.83
Carlisle-----	4	7	9	5	7	8	4	1	4.11
Garden-----	12	19	29	34	24	24	9	14	4.39
Mulford-----	3	17	11	24	13	12	6	7	4.34
Parker-----	1	3	9	7	10	14	6	4	5.09
Orchard-----	1	30	24	27	40	26	16	20	4.72
Vineyard-----	6	19	20	29	36	28	11	24	4.95
New School-----		3	8	8	8	9	4	8	5.27
School-----		13	16	20	14	12	4	7	4.48
Webster-----	1	5	8	6	8	5		4	4.48
Total-----	44	199	221	232	236	209	104	149	4.67
Percentage-----	3.15	14.28	15.85	16.65	16.93	14.99	7.46	10.69	

¹ See page 284.

It is seen that 44 persons, constituting 3.15 per cent of the families live alone ; the census of 1890¹ gave only 1.69 per cent of the families in the city as consisting of one person. Families consisting of from 2 to 6 persons make up 78.68 per cent of all those investigated ; for the whole city in 1890 the proportion was 71.87 per cent. Families of seven persons or over constitute in the selected districts and the whole city respectively 18.16 per cent and 26.44 per cent. Clinton street harbors the greatest number of large families, next to it in order coming Palisade, Vineyard and Orchard. The smallest average family is found in St. Mary's street, and the largest in New School street ; the variation from the average for the whole district, namely 4.67 persons to a family, is, however, in no case very great.

A comparison of this city with four other cities, for which similar data are available, shows some rather unexpected results.

TABLE XVI.—Families in Cities and Selected Districts.²

Cities.	Slum population.		Total Population.	
	Most common family.	Average size of family.	Most common family.	Average size of family.
New York-----	5 persons	4.90	3 persons	4.84
Chicago-----	4 "	5.09	4 "	4.99
Philadelphia-----	5 "	5.15	4 "	5.10
Baltimore-----	3 "	4.48	4 "	5.01
Yonkers-----	5 "	4.67	5 "	5.26

One would naturally expect to find the larger families in the "slum" districts, but this is the case

¹ Census of 1890, Volume on Population, p. 953.

² Seventh Special Report, etc., 1894, p. 44.

in only two cities, New York and Philadelphia, while in Baltimore the most common family consists of three in the slum districts, as against four for the whole city. This may be due to the absence of servants among the poorer classes, while in New York, the change from families of three to those of five persons as the predominant one is probably owing to the large families of the poor foreign population. In Chicago and Yonkers the predominant family is the same for the selected districts and the whole city. In comparing the average size of families we find the slum families to be slightly larger than the average for the whole city in Chicago, New York and Philadelphia, while in Baltimore and Yonkers the families of the slums are considerably smaller than the average for the whole city. This may be in part due to the absence of large hotels and boarding houses or institutions which harbor large numbers of inmates in the selected districts, but which raise the average for the whole city. But it is not altogether fair to characterize the streets investigated in Yonkers as a "slum."

VI.

AVERAGE NUMBER OF ROOMS IN TENEMENTS.

The mere enumeration of the number and character of the houses does not afford very satisfactory information as to the condition of the people, nor does the number of persons to a house give more than a superficial indication of the amount of over-crowding. Both these facts have been presented for the districts investigated in Yonkers. The number of persons to a house, the further classification of the population according to the number of tenements to a house, and the size of the family have all been given in detail, and have made clear the fact that there exists a large tenement house population in Yonkers and a considerable degree of concentration. It now remains to determine more definitely the degree and extent of the over-crowding, and this we shall best arrive at by a further classification according to the number of rooms to a tenement. Table XVII exhibits the number of families having the specified number of rooms, and the population comprised in these families, with the average number of persons to a family and to a room.

From this we see that there are four families occupying single room tenements, but the number is so small—less than 1 per cent of the population—that we may pass them by. The number of families occupying two-room tenements is much greater, comprising 4.52 per cent; the average number of persons to a room in this class is 1.53. In the three-room tenements is found the

TABLE XVII.

Rooms to a tenement.	Number of rooms.	Number of families.	Number of individuals.	Average number in family.	Average persons to a room.
1 Room-----	4	4	6	1.5	1.50
2 Rooms-----	126	63	193	3.1	1.53
3 Rooms-----	1287	429	1795	4.2	1.39
4 Rooms-----	1308	327	1467	4.5	1.12
5 Rooms-----	1140	228	1154	5.1	1.01
6 Rooms-----	1290	215	1151	5.3	.89
7 Rooms-----	427	61	333	5.5	.78
8 or more----	590	62	392	6.3	.66
Total -----	6172	1389 ¹	6501 ¹	4.67	1.05

largest number of families, 429, comprising 1,795 individuals, or 30 per cent of all the families under consideration. In this class the average number of persons to a room is 1.39. From this point onward as the tenements increase in size the number of families in occupancy is found to decline quite rapidly. Thus only 327 families occupy four-room tenements, or 23 per cent. At the same time with the increase in the size of the tenements, the size of the family exhibits an increase, but the average number of persons to a room constantly diminishes. In other words, though the families which occupy the more roomy tenements are larger than the average, they do not increase in the same proportion as the size of their tenements, so that they live under increasingly better conditions.

By considering whole classes as we have done, we can get only a general idea of the amount of crowding which these figures express, but by referring to the column in

¹ In the case of 5 families comprising 18 persons, the number of rooms was not given.

the table showing the number of persons to a room, we see that 75 per cent or three-fourths of all the families, comprising 4,625 persons, (71 per cent of the population) have on the average less than one room apiece. Just what this means will be more clear if we consider a typical family. Let us take the case of a family living in a three-room tenement.

The average number of persons in such a family is given as 4.2, or, in round numbers, say 4 persons. That is to say, such an average family will doubtless be composed of father, mother and two children, and the tenement of three rooms will contain, probably, a living room and two bed-rooms. If both the children are young or of the same sex, the family may be accommodated in the two bed-rooms, otherwise the living room or kitchen must be used as a sleeping room also. In any case a tenement of three rooms will be overcrowded if occupied by more than four persons. As the average for the class is 4.2 persons to a family, it is clear that while some of the families consist of fewer members, many of them are composed of five, six and even more individuals, and that these families must be frightfully over-crowded in a small tenement. The average size of the family in a four room tenement increases to 4.5 persons, but the number of persons to a room exhibits a decrease from 1.39 to 1.12. In the five room tenements the average size of the family is 5.1 and there is an average of almost a whole room for each member of the family. From this point on the increase in the number of rooms is more rapid than in the size of the family, and in all tenements containing six or more rooms there is more than a room apiece for all persons.

TABLE XVIII.—Number of Families and Individuals to a Tenement with Specified Number of Rooms.

Street.	1 Room.		2 Rooms.		3 Rooms.		4 Rooms.		5 Rooms.		6 Rooms.		7 Rooms.		8 Rooms.		9 Rooms.		10 or more.		Total.	Average number persons to a room.	
	Families.	Individ- uals.	Families.	Individ- uals.	Families.	Individ- uals.	Families.	Individ- uals.	Families.	Individ- uals.	Families.	Individ- uals.	Families.	Individ- uals.	Families.	Individ- uals.	Families.	Individ- uals.	Families.	Individ- uals.			
Clinton		12	48		88	448	44	220	2	10	9	44	5	19	4	13	1	4	2	14	167	820	1.31
St. Mary					4	17	3	9					1	3	1	4					9	33	.84
Washington ¹		8	26		44	182	23	103	13	62	5	27	1	5	2	7	1	7	2	20	99	439	1.11
James					15	43	4	22	4	15	3	19					1	6			27	105	.97
John					5	21	4	20			1	3					1				11	52	1.13
Edm.		1	2		4	12	3	18	1	6	3	18	1	7	1	6					14	69	1.08
Palisade	2	3	7	17	33	118	41	178	42	195	43	251	8	48	1	10			5	60	182	880	1.00
Carlisle		4	10	9	27	16	73	10	48	5	21	1	6								45	185	.99
Garden	1	1	8	23	58	226	46	203	34	176	14	62	2	13	1	2	1	8			165	724	1.09
Mulford ¹		3	9	32	119	19	77	21	108	14	73	1	7	2	8						92	401	1.03
Parker		1	1	11	43	11	49	16	99	11	59	1	3	2	15	1	6				54	275	1.07
Orchard		3	8	64	279	36	156	33	166	30	157	11	62	5	33	1	4				183	865	1.06
Vineyard		14	39	31	126	39	175	17	95	45	256	16	95	2	8	5	38	4	28	173	857	1.01	
New School		2	10	20	101	16	78	7	47	2	11						1	6			48	253	1.37
School ¹	1	2		7	21	17	70	20	93	22	105	10	54				4	24	2	8	83	377	.83
Webster				4	12	5	16	8	34	8	45	3	11	3	10	4	29		2	9	37	166	.74
Total	4	63	193	129	327	1467	228	1154	215	1151	61	333	24	116	21	140	17	136	1389	6501	1.05		
Percentage	.29	.09	4.53	2.97	30.88	27.62	23.54	22.58	16.42	17.76	15.48	17.72	4.39	5.12	1.73	1.79	1.51	2.16	1.23	2.09	100.	100.	

¹ The number of rooms was not given in the cases of 1 family of 7 persons in Washington street, 1 family of 3 persons in Mul- street and of 3 families of 8 persons each in School street.

A presentation of the facts contained in Table XVII, in detail for all the streets, follows in Table XVIII in order that conditions in the various districts may be compared with one another.

From this it is seen that the best conditions obtain in Webster avenue and School street, where the average number of persons to a room is only .74 and .83 respectively for the entire street. On the other hand, New School and Clinton streets exhibit the worst conditions, having an average of 1.37 and 1.31 persons to a room respectively. It is almost exclusively in the two, three and four room tenements that the overcrowding occurs, the average number of persons in such tenements in these two streets being five, or considerably higher than the average for the whole district, as given in Table XVII. The majority of the streets show a greater number of persons to a room than the average for the whole district, namely, 1.05.

It is of interest, though not perhaps of any definite value, to note the prevailing nationality in those streets which show the best and worst housing conditions. These conditions are undoubtedly best in Webster avenue where one-half of the houses have only a single family, and where only one-quarter of the dwellings are of less than five rooms. In Clinton street the conditions are undoubtedly the worst of all the streets convassed; here only one-eighth of the houses are inhabited by a single family, while seven-eighths of the dwellings have less than five rooms. In Webster avenue, one-half of the families are American,—the largest percentage in any street—while the majority of those remaining are Irish,

English and German. In Clinton street, about half of the families are Slavs—Hungarian, Russian and Polish,—most of the others being Irish and German. Of course other factors enter into account here, such as wages, rent, size of family, etc., which vitiate any general conclusions drawn from these few facts. But the facts presented here seem to substantiate the experience in other cities.

The position of Yonkers as regards crowding in the tenements may best be seen by a comparison between it and five other cities for which similar data are available, which is presented in Table XIX.

The predominant dwelling in Yonkers is seen to be one with three rooms, while four-room dwellings are almost as common—a better state of things than is found in any of the five large cities with which it is compared. Of these, Philadelphia and Chicago exhibit the best conditions, while in New York and Baltimore, the number of two room tenements is the largest. In Baltimore the percentage of persons living in single rooms is astonishingly large, while the average number to a room—3.15—is greater than for any other city. In this respect, too, Yonkers compares very favorably with the other cities, showing a smaller average number to the room, that is, less overcrowded conditions than the others in every instance but two, exclusive of Boston, which shows better conditions throughout. There is a fairly regular decrease in the average number of persons to a room as the dwellings grow larger, a not surprising result since the dwelling is apt to increase in size with higher wages while the family remains about the same.

TABLE XIX.—Percentage of Population in Tenement with Specified Number of Room.¹

Rooms to tenement.	New York.		Chicago.		Philadelphia.		Boston.		Baltimore.		Yonkers.	
	Per cent individuals.	Average number to a room.	Per cent individuals.	Average number to a room.	Per cent individuals.	Average number to a room.	Per cent individuals.	Average number to a room.	Per cent individuals.	Average number to a room.	Per cent individuals.	Average number to a room.
1 Room ----	3.55	3.13	3.16	2.74	7.32	3.11	.66	1.96	9.13	3.15	.09	1.50
2 Rooms ----	37.83	2.14	14.48	1.93	14.99	1.99	5.25	1.43	23.88	1.92	2.98	1.53
3 Rooms ----	33.74	1.80	24.20	1.54	31.73	1.83	16.58	1.24	13.12	1.36	27.63	1.39
4 Rooms ----	13.64	1.58	30.09	1.35	14.58	1.40	24.87	1.04	12.54	1.15	22.59	1.12
5 Rooms ----	4.24	1.82	10.16	1.24	8.18	1.27	18.25	.87	9.56	.99	17.77	1.01
6 Rooms ----	2.66	1.27	8.32	1.11	11.58	1.07	12.12	.79	12.16	.91	17.73	.89
7 Rooms ----	.46	1.06	2.15	.98	4.04	.89	6.63	.73	7.90	.84	5.13	.78
8 or more ----	3.88	1.07	9.44	.76	7.58	.67	25.64	.57	11.71	.64	6.08	.66
Total ----	100.	1.88	100.	1.37	100.	1.47	100.	.91	100.	1.19	100.	1.05

¹ Seventh Special Report, etc., 1894, p. 87; 22nd annual Massachusetts report, 1891, p. 359.

The average number to a room in Baltimore was 1.19; in Chicago, 1.37; in New York, 1.88; in Philadelphia, 1.47; and in Yonkers 1.05. The difference in favor of Yonkers is undoubtedly due to the fact that rent is not so high there as in the larger and more densely popu

lated cities. In the districts canvassed in the larger cities, too, there is a large foreign element, which herds together in small quarters, and makes the average of persons in a room consequently high. The statistics from the three largest cities in Continental Europe show to what extent the crowding prevails there throughout whole cities: the average number of persons to a room in 1890¹ was, in Vienna 2.1; in Berlin 1.9; in Paris 1.1.

In grouping together large numbers, what is won in correctness by the elimination of small errors, is lost in clearness of detail and sharpness of outline. To obtain a more adequate view of actual individual conditions we must enter into detail. In Table XX an attempt has been made to give a better idea of the extent of overcrowding in the dwellings investigated in Yonkers.

In defining "overcrowding" a very high standard has been adopted as compared with that used in similar investigations in other cities, but one which is certainly not out of the reach of American workmen, and which certainly should be set as a desirable standard. All dwellings have been considered as "overcrowded" where more than two persons, on an average for the whole family, used a room, including bedrooms, living room, and kitchen. There are many instances where three persons sleeping in a room, as parents and a young child, or three children, could not be said to overcrowd it, but where this average is kept up for a whole family in all its rooms, we are certainly justified in calling this dwell-

¹ Wiener Wohnungsverhältnisse, by Dr. Eugen von Philippovich, Archiv für sociale Gesetzgebung und Statistik, (Berlin, 1894), Band VII, Heft 2, p. 221.

TABLE XX.—Number Families and Individuals in Overcrowded Tenements.

Street.	2 Rooms.		3 Rooms.		4 Rooms.		Total.		Per cent of all in 2, 3, and 4 room tenements.		Average number individuals to a room.	
	Families.	Individuals.	Families.	Individuals.	Families.	Individuals.	Families.	Individuals.	Families.	Individuals.	In all.	In over-crowded.
Clinton.....	6	33	23	184	9	85	38	302	26.4	42.2	1.31	2.58
St. Mary.....			1	7			1	7	14.3	26.9	.84	2.33
Washington.....	2	11	5	37			7	48	9.3	15.4	1.11	2.53
John.....			1	8			1	8	11.1	19.5	1.13	2.67
Palisade.....	1	6	2	15	1	9	4	30	4.9	9.6	1.00	2.50
Carlisle.....	1	5					1	5	4.5	3.5	.99	2.50
Garden.....	1	8	6	45	2	18	9	71	8.0	10.9	1.09	2.54
Mulford.....			1	9			1	9	1.8	4.4	1.03	3.00
Parker.....					1	11	1	11	4.4	11.8	1.07	2.50
Orchard.....			12	90			12	90	11.6	20.3	1.06	2.50
Vineyard....	3	16	1	7	1	9	5	32	5.9	9.4	1.01	2.46
New School.....	1	7	4	33			5	40	13.2	21.2	1.37	2.86
Total.....	15	86	56	435	14	132	85	653	10.4	18.9	1.05	2.57
Percentage	23.8	44.5	13.1	24.2	4.3	9.0	10.4	18.9				

ing overcrowded. When the crowding results in forcing eight persons into two small rooms, as was done in a dwelling in Garden street, or when in three room dwellings, families of 9, 10, 11, and 12 persons are found, we are guilty of no exaggeration when we denounce such herding together as unworthy of self-respecting men and women. What the influence on the children must be, who either share the same room and bed without any separation of the sexes, and that, too, at an age when such intimacy is fraught with the gravest dangers

¹ The percentages are of the total number of families (819) and of individuals (3,455) in the 2, 3, and 4 room tenements. Compare Table XVII.

to decency and morals, or who witness in their parents' room, acts which should remain veiled to them, it is unnecessary to dwell upon here. Attention has been repeatedly called to the evil effects of such overcrowding from a hygienic point of view, and the statistics of immorality and incest furnish abundant proof of its influence on morality.

If we call all dwellings overcrowded in which more than two persons come upon a single room, we find that 86 dwellings, or 23.8 per cent of those canvassed, with a total population of 653 persons, are in this condition. That is, almost one-fifth of the 3455 persons under consideration live in such a manner as to preclude the possibility of a happy or comfortable family life. In this fact is to be found one of the chief reasons for the existence of the saloon, and only by striking at the root of the matter, the bad housing conditions of the poor, can headway be made against this evil.

In England all those tenements are considered overcrowded in which on an average two or more persons live in a room,¹ which is a higher standard than the one adopted in this investigation. If, however, we adopt this standard for Yonkers, we still have practically the same results. There are, in the district canvassed, 70 families, comprising 446 individuals, who have an average of exactly one room for every two persons. That is to say, there are 155 families, (11.12 per cent) comprising 1099 persons (15.38 per cent of all), who live in such overcrowded tenements. A comparison of

¹R. Mayo-Smith, *Sociology and Statistics*, (New York, 1896) p. 191.

Yonkers with other cities will best show how high this percentage is. In Boston only 2.03 per cent of the population were living under such conditions ;¹ in a certain crowded district in New York city—the 19th assembly district—the percentage was 11.1, of which however, only 4.73 per cent lived in tenements with more than two persons to a room.² The proportion in urban districts in England in 1890 was 12.31 per cent,³ or slightly higher than in Yonkers.

But high as the proportion in this city may seem, it is still small as compared with similar conditions in Germany, for instance. If the same standard be adopted for Berlin, we find that in 1890, one-third of the population of that city lived in overcrowded dwellings.⁴ Usually the term “overcrowded” is applied in the German cities only to those dwellings where there are six or more inhabitants for two rooms and ten or more for three rooms. Applying this standard we find that the following percentages of “small dwellings” (those of 1, 2 and 3 rooms each) were overcrowded in 1890: Berlin 3.3; Hamburg 1.15; Breslau 10; Leipzig 7.8; Frankfurt a. M 2.8.⁵ In Yonkers the proportion would be 2.4 per cent for the same conditions, a lower rate than is shown for any of the European cities named, except Hamburg.

¹ Mass. Rep., 1891, p. 365.

² Second Sociological Canvass, Federation of Churches in N. Y. City, (1897), p. 87.

³ Census of England, Vol. IV, p. 19.

⁴ Otto Truedinger, *Die Arbeiterwohnungsfrage*, (Jena, 1888), p. 32.

⁵ Statistisches Jahrbuch der deutschen Städte, 3 Jahrgang (Breslau, 1893), p. 42.

A comparison with foreign cities is of value, for further analysis shows that it is largely among foreigners that overcrowding occurs, more than half of those who live under such conditions in Yonkers being Hungarians. Next to these come the Irish and Italians. Among the Hungarians there was scarcely a case which was not caused by taking in lodgers. Inasmuch as the wife not infrequently works as out well as the husband, it is plain that this overcrowding is not so much the result of poverty as of a low standard of comfort. Less often was the large number of children the immediate cause, though this is frequently true. With a constantly increasing family a small dwelling, which was commodious when shared by two, becomes inadequate, and just at the time when the father should make a greater outlay for rent to provide himself with larger quarters, such expense becomes impossible owing to the other growing demands on his purse.

By reference to Table VI it will be seen that out of the total population of 6519 persons canvassed 583 were boarders, that is, persons living with a family with which they had no connection by blood or marriage; all relatives were included in the family proper, as far as possible. That is, 8.94 per cent of all lived in this relation, the greater number of whom were single men. This fact seems to point to the need of a men's lodging house in Yonkers.

In Berlin and Vienna, where the custom of taking "night lodgers" is widespread, the corresponding percentages in 1890 were respectively 8.6 per cent and 14.13 per cent of the total population.¹ In Clinton

¹ Statistisches Jahrbuch der deutschen Städte, 3 Jahrgang, p. 53.

street, where a large Slavish population resides, about one-fourth of the inhabitants were boarders: next in order come Washington street, inhabited by the same class, and Garden and Orchard streets, where the population is principally Irish.

VII.

REAR TENEMENTS.

In all investigations of tenement house conditions, it has been found that where front and rear tenement houses stood on the same lot, there the crowding was the worst, the available air space least and the mortality greatest.¹ In New York the death-rate in 1893 was 22.21 for tenements standing singly on a lot, and 27.66 where there were front and rear houses on the same lot. Not only are these rear houses in an unsanitary environment, but as a rule they are old and in bad repair; as the rooms in such houses are of course cheaper than others, they are sought out by the poorest class, among whom privation and disease easily cause a higher death-rate. In Yonkers the number of rear tenements is small, comprising only 6.17 per cent of the dwellings under consideration and sheltering 360 persons, or 5.52 per cent of the population.² These rear tenements, though as a rule not crowded so close against the front building, as is the case in large cities, are often in a more unsanitary environment than mere crowding could produce. They are situated in the yard in close proximity to the privy. Not infrequently there is a stable in the same yard, or, as in a few cases, the lower floor of the building is itself used as a stable. Generally the yard is littered with various things, or used at night as a storage place for wagons and carts. In a crowded

¹ Report of Tenement House Committee, 1894, p 33.

² See Table XXI.

city there may be some excuse in the high price of land for the erection of rear tenement houses, but in a small town like Yonkers, where there is plenty of unoccupied land in every direction, there is neither necessity nor excuse for the erection of such buildings. One

TABLE XXI.—Number of Families and Individuals in Rear Tenements.

Street.	Number of families living in				Number of individuals living in			
	Front tenements.	Per cent.	Rear tenements.	Per cent.	Front tenements.	Per cent.	Rear tenements.	Per cent.
Clinton-----	142	85.0	25	15.0	725	88.4	95	11.6
St. Mary-----	7	77.8	2	22.2	23	69.7	10	30.3
Washington----	93	93.0	7	7.0	408	91.5	38	8.5
James-----	27	100.0	0	.0	105	100.0	0	.0
John-----	11	100.0	0	.0	52	100.0	0	.0
Elm-----	14	100.0	0	.0	69	100.0	0	.0
Palisade-----	174	95.4	8	4.6	853	96.9	27	3.1
Carlisle-----	45	100.0	0	.0	185	100.0	0	.0
Garden-----	154	93.3	11	6.7	676	93.4	48	6.6
Mulford-----	89	95.7	4	4.3	357	95.8	17	4.2
Parker-----	53	98.1	1	1.9	271	98.5	4	1.5
Orchard-----	179	97.8	4	2.2	843	97.5	22	2.5
Vineyard-----	152	87.9	21	12.1	769	89.7	88	10.3
New School----	48	100.0	0	.0	253	100.0	0	.0
School-----	83	96.5	3	3.5	374	97.1	11	2.9
Webster-----	37	100.0	0	.0	166	100.0	0	.0
Total-----	1308	93.8	86	6.2	6159	94.5	360	5.5

modification in this condemnation may, however, be made. In many cases the streets are crooked or not parallel, and the blocks are therefore large and irregular in shape, so that a rear tenement built at the rear of a very deep lot would not have to meet such serious objections. But that is the case with very few of the houses under consideration. Clinton street and Vineyard avenue, the two streets which contain almost half

of the rear tenements, are laid out with perfect regularity, as are most of the other streets containing them. In the whole city there are only 139 rear tenement-houses of which 86 are comprised within the present investigation.

The situation of the dwelling in the house is of interest as showing the number of families which occupy the whole house, those who live in the basement or cellar and those who live higher than the third story. These particulars are given in Table XXII. According to this 5.1 per cent of the families occupy the whole house; but in Table XII we saw that 14.56 per cent of the families live in houses of only a single tenement, so we may conclude that these numbers should correspond and may reduce the percentage of those not given (24.4) proportionately. One hundred and twenty-six families, or a little less than one-tenth, live in basements. This is a much higher percentage than is found in any of the European cities, where the evil of "*Kellerwohnungen*" is especially great.¹ Thus in Berlin and Hamburg the percentage is 7, in Breslau 4 and in Dresden 2. Many of the dwellings in Yonkers are, however, not so bad as might seem, since many of the houses are built on steep declivities, and the basement floor, though below the level of the street in front, is often above the ground at the rear, or the reverse. In general, basement and cellar dwellings must be strongly condemned, not only on account of their darkness and dampness, but also from the fact that, owing to their low position, they often lack

¹Stat. Jahrb. der deutschen Städte, 3 Jahrg., p. 38.

suitable drainage, water and toilet accommodations. Where a privy occupies the yard, their unsanitary character is greatly increased. The number of families living on the fourth floor or higher, as shown by the table, is small—only 3 per cent—showing that the majority of tenement houses in Yonkers are not more than three stories high. Almost half of the total number live on the first and second floors.

TABLE XXII.—Situation of Tenements.

Street.	Base- ment.	1st floor.	2nd floor.	3rd floor.	4th floor or over.	Occu- pying whole house.	Not speci- fied.	Total.
Clinton	4	21	18	10	-----	-----	114	167
St. Mary	-----	-----	-----	-----	-----	1	8	9
Washington ..	9	25	37	20	-----	2	7	100
James	2	8	8	3	1	3	2	27
John	-----	6	3	1	1	-----	-----	11
Elm	1	2	3	1	-----	2	5	14
Palisade	3	33	46	29	21	5	45	182
Carlisle	9	13	14	6	1	2	-----	45
Garden	14	39	43	24	12	10	23	165
Mulford	13	18	28	12	-----	4	18	93
Parker	13	16	16	2	1	1	5	54
Orchard	24	33	34	7	-----	13	72	183
Vineyard	25	44	50	19	-----	8	27	173
New School ..	2	13	13	13	2	1	4	48
School	3	27	23	13	3	7	10	86
Webster	4	11	9	1	-----	12	-----	37
Total	126	309	345	161	42	71	340	1394
Percentage ..	9.0	22.2	24.7	11.6	3.0	5.1	24.4	100.

VIII.

SANITARY CONDITIONS.

The sanitary condition of houses in Yonkers is, on the whole, good. Owing to its situation on sloping ground the drainage is excellent, and the more vigilant enforcement of the sanitary code has resulted in good general conditions in this respect in the city. Many of the property owners are, moreover, men of small means, who live in or near the houses they own, so that they are in close contact with their tenants and familiar with the condition of their buildings. The result is that few of the tenement houses in Yonkers are in dangerously bad repair or menaces to the public health. The following tables (XXIII-XXV) exhibit the sanitary condition of 587 houses, situated in the streets selected for investigation, and have been compiled from records filed with the board of health. Before entering upon an analysis of the results of these tables, it will be well to explain briefly what is meant by the various terms employed. The term "Sanitary condition" includes the state of repair, drainage, surroundings and general condition of the house. The classification of the tenements as "good," "fair," "poor" or "bad" is necessarily more or less the result of the individual judgment of the investigator, but it is thought that the terms are sufficiently clear and explicit to preclude any great errors. The cleanliness of the tenements refers to conditions under control of the tenant; here, as well as in respect to the condition of the yard, only a threefold classification was made into "clean," "fair" and "dirty."

Table XXIII exhibits the houses investigated, classified according to their sanitary conditions and the cleanliness of the yards and rooms; Table XXIV shows the number of persons living under these conditions.

TABLE XXIII.—Sanitary Conditions of Houses, Tenements and Yards.

Street.	Number of houses with sanitary conditions				Number of houses with yards ¹			Total houses.	Number of tenements with rooms		
	Good.	Fair.	Poor.	Bad.	Clean	Fair.	Dirty.		Clean.	Fair.	Dirty. Total.
Clinton	25	2	2	10	25	1	13	39	95	---	15 113
Washington	19	5	1	---	19	3	3	25	68	14	5 87
James	6	7	1	1	8	4	---	15	33	5	11 49
John	3	1	---	2	2	4	---	6	5	5	6 16
Elm	4	3	---	---	4	1	1	7	11	5	5 21
Palisade	47	17	4	---	36	8	17	68	168	37	21 226
Carlisle	16	1	---	---	14	---	2	17	43	6	1 50
Garden	50	13	4	---	56	3	5	67	158	36	18 212
Mulford	30	9	3	2	32	6	6	44	103	13	18 134
Parker	26	2	1	1	22	3	5	30	67	7	9 83
Orchard	34	3	6	15	32	1	25	58	132	3	29 164
Vineyard	72	15	---	---	76	3	8	87	178	21	18 217
New School	14	7	4	---	6	6	5	25	56	16	10 82
School	51	16	6	1	61	12	1	74	169	30	15 214
Webster	19	---	1	5	23	---	2	25	58	---	6 64
Total	416	101	33	37	417	55	93	587	1349	198	187 1734
Percentage	70.88	17.20	6.30	5.62	71.04	9.37	15.84	100.	77.81	11.42	10.77 100.

¹ There were three houses without yards in James street, one in Elm, seven in Palisade, one in Carlisle, three in Garden, seven in New School; total 22 houses, or 3.75 per cent.

TABLE XXIV.—Number of Individuals in Houses with Specified Sanitary Conditions.

Street.	In houses with sanitary conditions			In houses with yards ¹			In tenements with rooms			Total persons.
	Good.	Fair.	Poor.	Bad.	Clean.	Fair.	Dirty.	Clean.	Fair.	
Clinton	285	12	30	127	295	6	153	391	63	454
Washington	210	70	19	220	28	51	299	218	62	19
James	50	51	11	3	57	40	115	70	17	28
John	22	5	18	22	23	45	71	16	9	20
Elm	34	37	3	38	3	12	29	22	20	71
Palisade	604	209	56	389	119	270	869	642	152	77
Carlisle	176	15	37	139	60	118	191	161	25	5
Garden	500	144	68	519	60	118	712	490	129	93
Mulford	280	91	32	23	257	85	84	339	32	87
Parker	226	20	11	19	198	27	51	221	21	34
Orchard	372	23	71	148	314	18	282	509	13	92
Vineyard	688	169	24	698	24	135	857	698	81	78
New School	213	103	90	141	95	104	406	242	106	58
School	499	121	61	10	584	96	11	538	110	43
Webster	123	12	30	141	21	165	150	15	15	165
Total	4102	1250	461	378	4080	624	1325	4792	667	732
Percentage	66.26	20.19	7.45	6.10	65.90	10.08	21.40	77.41	10.77	11.82
										100.

¹ There lived in houses without yards, 18 persons in James street and Elm; 63 in Palisade; 15 in Carlisle and Garden; 66 in New School; total, 162 persons or 2.62 per cent.

Referring to the recapitulation at the foot of the tables it is seen that 4102 houses, or 70.88 per cent, containing 4,102 individuals, or almost two-thirds of the 6,000 under consideration, were classed under "good" sanitary conditions, while 37 houses, with 6.15 per

cent of the population, were reported as in "bad" sanitary condition. About one-eighth of the houses in which live a little more than one-eighth of the population, represent conditions worse than the average, that is, either "poor" or "bad;" these two classes include all tenements open to serious objection. The greatest proportion of houses in "poor" or "bad" sanitary condition is found in John street; next to it come Clinton, Orchard and Webster.

If we inquire into the cleanliness of the yards attached to the houses, which has a close connection with the health and comfort of the tenants, the percentages are found to be not so favorable. There were returned as having clean yards, about 400 houses in which dwelt 4,000 individuals, or 65.9 per cent of all; over 1,300 persons, or more than one-fifth of all, lived in houses the yards of which were dirty, that is exposed to conditions either disgusting or dangerous. As most of the yards contain privies or are used for drying clothes, etc., it is not possible for the tenants to escape contact with them. Of the various streets, Orchard street is the worst offender in this respect, over 43 per cent of the houses there having dirty yards. Twenty-two houses, with a population of 162 persons, have no yards at all, a percentage which, however, compares very favorably with those for other cities.¹

¹The following percentage of families in each of the investigated districts live in houses with no yards: New York, 15.54; Chicago, 30.53; Philadelphia, 10.44; Boston, 23.49; Baltimore, 15.74; Yonkers, 2.62. 7th Spec. Rep. U. S. Com. of Labor, 1894, p. 96; Rep. of Mass. bureau of labor statistics, 1892, p. 125.

The third classification of the tenements, that according to the cleanliness of the rooms, discloses higher percentages in the best class than either of the other two classifications—a tribute to the struggles of the poor against their surroundings. Over 77 per cent of the population lived in clean rooms, while about 10 per cent of the rooms, harboring over 11 per cent of the population, were classed as dirty. By far the largest proportion of these is found among the Irish residents of Orchard, Mulford, Garden and Vineyard streets. Although 15 tenements in Clinton street are reported as dirty, it is the general testimony that the Hungarians are among the cleanest of the tenement house population.

More important than any of these, however, are the facts presented in Table XXV as to the toilet accommodations in the tenements.

This table presents the number of houses having water closets, privies, and school closets, and the number of persons using these conveniences. Somewhat less than two-thirds of all the houses have privies or closets in the yards, which are used by 3515 persons or 56.77 per cent of the population. Less than one-third of the houses are provided with water closets, and these accommodate 2509 persons or 40.32 per cent of the population. These 189 houses are furnished with 370 separate water-closets, an average of two to a house. Every water-closet is therefore used, on the average, by 1.6 families or 6.7 persons; every privy or closet by 2.4 families or 9.5 persons. These high averages disclose one of the worst evils in connection with this subject,

TABLE XXV.—Toilet Accommodations.

Street.	Number of houses with				Number persons in houses with				Average number persons to a			
	Water closet in house.	Privy and vault in yard.	Closet in yard.	No accommodation.	Total.	Water closet in house.	Privy vault in yard.	Closet in yard.	No accommodation.	Total.	Water closet.	Vault or closet.
Clinton	2	35	---	2	39	46	392	---	16	454	11.5	11.3
Washington	10	1	9	5	25	130	19	95	55	299	8.7	11.4
James	8	---	7	---	15	56	---	59	---	115	4.3	8.4
John	---	3	3	---	6	---	14	31	---	45	---	7.3
Elm	3	1	3	---	7	48	7	16	---	71	9.6	5.8
Palisade	43	9	16	---	68	652	87	130	---	869	5.8	12.8
Carlisle	10	6	1	---	17	146	44	1	---	191	5.6	6.4
Garden	19	22	18	8	67	276	243	158	35	712	9.2	10.0
Mulford	17	3	23	1	44	193	19	186	28	426	7.1	7.9
Parker	---	27	1	2	30	---	245	17	14	276	---	8.8
Orchard	10	44	4	---	58	139	423	52	---	614	9.3	9.9
Vineyard	7	64	13	3	87	80	607	153	27	857	10.0	9.9
New School	17	1	6	1	25	275	35	91	5	406	7.1	18.0
School	43	2	25	4	74	455	38	188	10	691	6.2	8.4
Webster	---	25	---	---	25	---	165	---	---	165	---	6.6
Total	189	243	129	26	587	2496	2338	1177	180	6191	6.7	9.5
Percentage	32.20	41.39	21.97	4.44	100.	40.32	37.76	19.01	2.91	100.	---	---

namely the small number of closets and privies provided and the necessity of their joint use by several families. In many cases there is the most abominable crowding, which becomes apparent only upon a close inspection of the details and does not appear at all in the table.

Thus, in 12 houses, in which live 56 families, comprising 256 persons, but a single water-closet was provided for each house, so that on an average more than 21 persons were compelled to use each closet; in no case were there less than 18 persons to a single closet. Fifty-seven privies or closets in the yards were used by 219 families, comprising 1202 individuals, or an average of more than 21 persons to a privy. This average is, however, in reality, not so high, since many of the privies are divided into two or even three compartments. The most noteworthy fact disclosed by the table is that in 26 houses, containing 180 individuals, no toilet accommodation at all was provided. This discloses a most surprising state of affairs and one which demands a prompt remedy. No excuse can be made for failure to supply necessary sanitary conveniences.

A closer examination of the table shows that the worst conditions prevail in Clinton, Garden and Washington streets and Vineyard avenue. Referring to the last two columns, we find that the water closets in Clinton street and the privies in New School street are most crowded, each one being used on an average by more than 11 and 18 persons, respectively.

A comparison of Yonkers with six other cities shows that a larger percentage of families under investigation here have water closets in their houses than in the selected districts of four of the six cities referred to. The percentages of families living in houses with water closets or privies are as follows :

TABLE XXVI.—Percentage of Families using Water Closets or Privies.

City.	Having water closets.	Having privies.	Total.
New York ¹	47.31	52.69	100.
Chicago ¹	26.46	73.53	100.
Philadelphia ¹	30.37	69.63	100.
Boston ²	91.91	8.09	100.
Baltimore ¹	12.07	87.93	100.
Atlanta ³	38.36	61.64	100.
Yonkers ⁴	40.32	56.77	97.09

¹ Seventh Special Report, etc., 1894, p. 94.

² Twenty-third annual Massachusetts report, 1892, p. 120.

³ Of entire city. Eighteenth annual report of board of health, 1896, p. 18.

⁴ Percentages are of population ; 2.91 per cent have no accommodations.

IX.

RENT OF DWELLINGS.

The problem of the housing of the working people is, in its last analysis, largely a money question. Before laying down any rule as to how a man should dwell we must first inquire what his other living expenses are and what his wages amount to. Knowing these sums, we are then in a position to say how much he may ex-

TABLE XXVII.—Number of Tenements Paying Specified Monthly Rents.

Monthly rent.	Num-ber of tenements.	Per cent.	Monthly rent.	Num-ber of tenements.	Per cent.	Monthly rent.	Num-ber of tenements.	Per cent.
Under \$3	8	.78	\$ 8 to \$ 8.99	185	18.00	\$14 to \$14.99	26	2.53
\$3 to \$3.99	16	1.56	9 to 9.99	85	8.27	15 to 15.99	20	1.94
4 to 4.99	41	3.99	10 to 10.99	125	12.16	16 to 16.99	8	.78
5 to 5.99	122	11.87	11 to 11.99	27	2.62	18 to 18.99	8	.78
6 to 6.99	149	14.49	12 to 12.99	55	5.35	20 to 20.99	9	.87
7 to 7.99	115	11.19	13 to 13.99	21	2.04	22 or over.	8	.78
						Total-----	1028	100.

pend upon his housing accommodations. Fortunately we have been able to tabulate the rents of 1,028 out of the 1,394 dwellings canvassed in Yonkers, so that we have accurate data upon which to base further conclusions. Of the remaining 366 dwellings, 205 were inhabited by their owners, while in 161 cases the desired information was not given. Table XXVII gives the number of dwellings classified according to the monthly rent paid. Of these the largest number, 185, paid between \$8 and \$9 rent per month; 149 paid from \$6 to \$7.

If we group the figures together we shall be enabled to compare them better with similar figures from other cities. The Seventh Special Report¹ of the U. S. Commissioner of Labor for the year 1894 furnishes a table for the slum districts of Baltimore, Chicago, New York and Philadelphia, with which we may compare the statistics obtained in Yonkers:

TABLE XXVIII.—Percentage of Tenements Paying Specified Rent.

	New York.	Chicago.	Philadel- phia.	Baltimore.	Yonkers.
Weekly rent paid.	Of 5,582 tenements.	Of 3,572 tenements.	Of 3,021 tenements.	Of 3,251 tenements.	Of 1,028 tenements.
Under \$1-----	1.50	2.44	9.86	35.99	2.34
\$ 1 to \$ 2-----	36.47	34.91	37.17	41.28	41.54
2 to 3-----	31.80	32.22	21.15	10.34	41.05
3 to 4-----	17.81	11.98	10.20	5.26	11.86
4 to 5-----	3.26	3.36	3.21	2.09	1.55
5 to 6-----	1.74	1.88	2.85	1.14	.97
6 to 7-----	1.02	.81	1.13	.55	.19
7 to 8-----	.18	.59	.26	.03	.19
8 to 9-----	.13	.42	.36	.43	-----
9 to 10-----	.14	.17	.17	.09	.09
10 or over-----	.50	2.49	.30	.15	.19
Not specified-----	5.45	8.73	13.34	2.65	-----
Total-----	100.	100.	100.	100.	100.

¹ Seventh Special Report, 1894, p. 93.

In all five cities the families paying \$1 but under \$2 form the largest group, constituting from 34.91 per cent in Chicago to 41.54 per cent in Yonkers. Baltimore differs from the other cities in the large number of families which pay less than \$1 a week for rent, a fact due to the large percentage of one and two room dwellings found in that city. Yonkers has a very large proportion of families which pay \$2 but under \$3 a week, only 15 per cent paying more than \$3 a week. This shows that the working people of Yonkers pay less in rent than those in the other cities except Baltimore. Being a much smaller town the rents are naturally lower in Yonkers and the inhabitants are enabled to get along with a smaller expenditure for this object than in the larger cities.

A further analysis of these figures will enable us to obtain a better idea of the return which the average working-man in Yonkers gets for the money he expends in rent. Table XXIX exhibits the number of dwellings and rooms, with average rent paid for them, by streets. Table XXX gives the same information in a different form, by rooms to a dwelling. This latter shows the rent per room in dwellings of different sizes. A comparison of these figures shows a constant decrease in the cost per room, as the dwelling grows larger—but another illustration of the fact that the poor have to pay the highest prices for all that they buy. The worse a man lodges, the more he pays for his lodging relatively speaking. While the poor man who is reduced to a single room or a small dwelling with two rooms has to

TABLE XXIX.—Rent of Tenements and Rooms, by Streets.

Street.	Number of tenements.	Number of rooms.	Total rent.	Average monthly rent per tenement.	Average rent per room.
Clinton-----	143	539	\$1,146.50	\$ 8.13	\$2.13
St. Mary-----	7	24	51.00	7.28	2.12
Washington-----	86	316	677.50	7.87	2.14
James-----	26	105	185.00	7.11	1.76
John-----	9	33	53.50	3.66	1.62
Elm-----	12	56	122.00	10.17	2.18
Palisade-----	158	754	2,020.50	12.80	2.68
Carlisle-----	36	152	257.50	7.15	1.70
Garden-----	67	258	457.50	6.83	1.77
Mulford-----	55	221	375.25	6.82	1.70
Parker-----	22	91	160.50	7.30	1.78
Orchard-----	151	621	1,145.00	7.58	1.84
Vineyard-----	119	511	870.00	7.31	1.70
New School-----	44	165	360.50	8.20	2.19
School-----	70	364	811.00	11.60	2.23
Webster-----	23	116	210.50	9.24	1.81
Total-----	1028	4276	\$8,903.75	\$ 8.66	\$2.10

TABLE XXX.—Rent of Tenements and rooms, by Rooms to a Tenement.

Rooms to a tenement.	Number of tenements.	Number of rooms.	Total rent.	Average monthly rent per tenement.	Average rent per room.
1 Room-----	3	3	\$ 8.00	\$ 2.66	\$2.66
2 Rooms-----	46	92	219.00	4.76	2.38
3 "-----	362	1086	2,281.50	6.30	2.10
4 "-----	264	1056	2,285.25	8.65	2.16
5 "-----	170	850	1,676.50	9.86	1.97
6 "-----	140	840	1,604.00	11.46	1.91
7 "-----	28	196	437.50	15.62	2.23
8 or over-----	14	139	384.00	27.43	2.76
Total-----	1027 ¹	4275 ¹	\$8,895.75 ¹	\$ 8.66	\$2.08

¹ One tenement of one room, with rent of \$8, in School street is not included, as rent seemed excessive.

pay \$2.66 or \$2.38 a month per room, his neighbor, who has hired a dwelling of six rooms, gets off with 25 per cent less.

This is a truth which is by no means confined to Yonkers, but is found to obtain wherever investigations have been made on this point. I have been able to gather similar statistics from a few other cities, which are presented in the following table.

TABLE XXXI.—Average Monthly Rent of Rooms, in Tenements of Specified Sizes.

Rooms to a tenement.	Boston. ¹	Yonkers. ²	Basel. ³	Vienna. ⁴	Leipzig. ⁵	Halle a s. ²
1 room -----	\$5.73	\$2.66	\$3.01	\$2.33	\$3.77	\$1.22
2 Rooms. -----	4.32	2.38	2.20	1.63	3.24	.97
3 " -----	3.38	2.10	2.01	1.62	3.19	.90
4 " -----	3.20	2.16	2.05			
5 " -----	3.41	1.97	2.13			
6 " -----	3.40	1.91	2.34			
7 " -----	3.73	2.23	2.34			
8 or more -----	4.68	2.76	2.36			
Average -----	\$3.48	\$2.09	\$2.19			

From this table it is apparent that the cost per room of the small dwellings is greater—sometimes much greater—than that of the larger dwellings, though the size of the dwelling in which the cheapest rooms are

¹ Twenty-second annual report of Massachusetts bureau of statistics of labor, 1891, p. 512.

² Personal investigations.

³ Wohnungsenquête in Basel, Dr. Karl Bücher. (Basel, Switzerland, 1890), p. 276.

⁴ Wiener Wohnungsverhältnisse, Dr. E. Philippovich, *ut supra*, p. 239.

⁵ Die Arbeiterwohnungsfrage im Königreich Sachsen, Dr. Morgenstern in *Arbeiterfreund*, Jahrgang 27, 1889, p. 36.

found differs in different cities. In Yonkers, the cheapest is the six room dwelling. In this fact is doubtless to be found the true economic cause of the prevalence of subletting a part of the dwelling to a stranger, which we found to be the case in a large proportion of the dwellings investigated. In other words, it is cheaper for the poor man to hire a dwelling too large for his own use or beyond his means and then to sublet a part of it, even if he receives back only the original outlay, than it would be to rent a small dwelling for himself alone. If, for instance, a family needs a dwelling of only three rooms, they will save at least 9 per cent of the rent if, instead of taking a three room tenement, they rent one of six rooms, and then sublet the three rooms they do not occupy or fill them with boarders.

This practice introduces, however, a very harmful factor into the budget of the workingman who adopts such a plan. It makes him economically dependent upon the ability or willingness to pay of a third person and thus introduces an element of uncertainty into all his calculations. Inasmuch as the greatest evil of the workingman's lot is the unsteadiness of employment and income, the introduction of a new source of uncertainty can have only harmful results. It is, therefore, probably safer for the poor man to content himself with the smaller tenement and pay the larger price, than risk the dangers of bad tenants, or of being left with unrented rooms on his hands.

Returning again to Table XXIX we note the average rent of a dwelling and of a room in the various streets investigated. The former shows a surprising variation,

ranging from \$3.66 a month in John street to \$12.80 in Palisade avenue, but as the rent of a tenement is influenced chiefly by its size, we may pass by these results and note the average rent per room. The variations in these figures disclose clearly the influence of locality on rent. In Palisade avenue, a business street in the heart of the city, the average rent per room is far greater than in any other street—\$2.68 a month. Next to this come Elm and School streets, both *nice* residence streets, where the houses are surrounded by small yards. Clinton, Washington and St. Mary's are also in the centre of the city, and very convenient to the factories where most of their population work. Garden, Carlisle, Mulford, Orchard, Parker and Vineyard are situated in the suburbs of the city, where land is cheaper. Although, as a rule, negroes are forced to pay high prices for their houses, it will be seen that the rent in John street, which, together with James street, is inhabited almost exclusively by the colored population, is lower per dwelling and room than in any other street. The reason is that the locality is a most undesirable one, both streets being back alleys, while the houses are small cheap frame structures.

X.

EARNINGS.

We can judge satisfactorily the amount of money which a workingman may expend for his rent, only after we have ascertained what his earnings amount to.

This we are enabled to do for Yonkers in the case of 764 families, which are classified according to their weekly earnings in Table XXXII.

From this it is seen that a few more than one-third of all the families earned between \$9 and \$11 a week, while by far the largest number in any one group is in that earning \$18 or over, namely 183 families. This is principally due to the fact that many of the young girls and women, as well as the male members of the family, find work in the factories, and still continue to live at home. Fifty-seven families, or 7.5 per cent., earn less than \$7 a week. The average earnings of all families per week were \$13.27, representing, with steady employment, a yearly income of \$690.04. There were 1043 wage-earning individuals¹ comprised in these families, and if we divide the total amount of earnings by this number, we find that the average weekly wages per individual are \$9.72, corresponding to a yearly income of \$505.44. The 11th Census gave \$519.96 as the average yearly earnings of 11,303 employees in Yonkers in 1890.² This gives a weekly wage of about \$10,

¹ See Table XXXIII.

² Census of 1890, Manufacturing Industries, Pt. II, Statistics of Cities, pp. 630, 631.

TABLE XXXII. --Number of Families with Specified Weekly Earnings.

Street.	Under \$7.00.	\$7 to \$7.99.	\$8 to \$8.99.	\$9 to \$9.99.	\$10 to \$10.99.	\$11 to \$11.99.	\$12 to \$12.99.	\$13 to \$13.99.	\$14 to \$14.99.	\$15 to \$15.99.	\$16 to \$16.99.	\$17 to \$17.99.	\$18 or over.	Total.	Average per family.
Clinton	2	2	13	35	35	4	5	---	---	7	2	1	33	139	\$14.36
St. Mary	---	---	1	---	1	---	---	---	---	---	---	1	5	8	23.12
Washington	12	2	4	4	2	---	1	---	---	1	1	---	1	28	4.77
James	3	2	1	1	1	---	1	---	---	---	---	---	1	10	8.73
Elm	---	---	---	2	1	---	---	---	---	---	1	---	---	4	11.12
Palisade	6	5	7	3	7	1	2	1	2	2	3	1	9	49	12.51
Carlisle	---	1	1	2	3	1	1	---	1	---	---	---	---	10	11.06
Garden	5	4	7	12	7	1	8	1	2	2	4	1	13	67	12.22
Mulford	4	1	5	14	6	---	3	1	2	5	3	1	10	55	12.74
Parker	---	1	---	5	5	1	1	---	1	4	---	---	4	22	14.14
Orchard	3	2	11	24	25	5	8	1	2	7	3	6	55	152	18.26
Vineyard	12	3	12	26	17	2	11	4	4	8	6	7	37	149	10.55
New School	10	2	8	4	7	---	2	1	1	1	1	---	---	37	8.58
Webster	---	---	---	---	6	---	2	2	---	5	4	---	15	34	13.19
Total	57	25	70	132	123	15	45	11	15	42	28	18	183	764	13.27
Percentage	7.5	3.3	9.2	17.3	16.1	1.9	5.9	1.4	1.9	5.5	3.7	2.3	24.00	100.	

which corresponds so nearly to the results in Tables XXXII and XXXIII, as to be strong testimony to their correctness. Assuming these figures therefore to be correct, Yonkers is immediately placed in a favorable light as compared with other places. The ninth annual report (1895) of the bureau of statistics in Maine reports, after an investigation of 556 workingmen's families in 18 different industries, that the average yearly income of a family is \$560.74, or \$129.30 a year less than the income of an average Yonkers family. From the sixteenth annual report of the Massachusetts bureau on the statistics of labor, we obtain the following figures :

Average weekly wages paid men.....	\$11.85
" " " " women.....	6.09
" " " " young persons.....	5.10

For Yonkers the corresponding figures are \$11.62, \$7.90 and \$7.48. If we compare the wages in Yonkers with those paid in the slum districts of New York, Chicago, Philadelphia and Baltimore, we find Yonkers still more favorably situated. The average earnings per week for each person in selected districts in these cities were :¹

New York.....	\$8.36
Chicago.....	9.88
Philadelphia.....	8.68
Baltimore.....	8.65

¹ Seventh Special Report, 1894, p 57.

The only city where the average weekly earnings exceeds those in Yonkers is Chicago, but it must be remembered that the figures for that city were compiled just prior to the opening of the World's Fair, when wages were high and work plentiful.

XI.

RENT AND INCOME.

Whatever value may be attributed to the statistics of earnings in Yonkers as given in Table XXXII, we may safely and properly use them for purposes of comparison with the rents paid by the same families. Attention was first called to the relation between income and the outlay for rent by Dr. Schwabe, Chief of the Municipal Statistical Bureau in Berlin, in the year 1867. He formulated the following "social law" with respect to such payments: "The smaller the income, the greater is the proportion which is expended for rent." Dr. Engel, of the Royal Prussian Bureau, extended this later to all expenditures for the necessities of life.¹ According to Dr. Schwabe, a family with an income of \$543 spends 20 per cent of this for the rent. Engel places this outlay at 12 per cent. Investigations by Dr. E. R. L. Gould in the United States and Europe substantiate this latter figure.² According to his investigation, from 10 per cent to 12.5 per cent in Europe and in the United States from 12 per cent to 16.9 per cent of the average income is expended for rent by workingmen in the coal, iron and steel industries. In Maine, for families with an average income of \$560, the proportion which goes for rent is 15.4 per cent;³ in Massachu-

¹ E. Engel, *Die Moderne Wohnungsnot*, (Leipzig, 1873,) p. 10.

² In *Die Jahrbücher für Nationalökonomie und Statistik*, 3^{te} Folge, Band V. (Jena, 1893,) p. 182.

³ Ninth annual report, 1895.

setts, for families with an average income of \$525 the rent amounts to 15.5 per cent; where the income averages \$675 the rent averages 14 per cent of it.¹

Let us turn to Yonkers and see how conditions there compare with the results obtained elsewhere.

Table XXXIII shows the earnings and the proportion which rent bears to income by streets. The statistics for the families canvassed show that 13.49 per cent of the income is paid for rent. That is, the expenditure made for rent here is about the same as in other places which have been investigated. If we take up the streets separately, we find the most remarkable variation, from 6.4 per cent in St. Mary's street to 52.9 per cent in Carlisle Place. This is due to the fact that in many of

TABLE XXXIII.—Earnings Compared with Rent.

Street.	Number of wage-earners.			Average weekly wage of			Per cent. of income expended for rent.
	Men.	Women.	Young persons.	Men.	Women.	Young persons.	
Clinton -----	131	11	53	\$11.37	\$ 8.68	\$7.77	13.5
St. Mary -----	8	2	4	17.00	11.00	6.75	6.4
Washington -----	26	2	-----	4.33	10.50	-----	36.9
James -----	5	3	3	11.00	5.75	5.00	21.4
Elm -----	4	-----	-----	11.13	-----	-----	20.4
Palisade -----	28	3	37	12.45	5.42	6.70	19.9
Carlisle -----	7	-----	5	9.77	-----	8.44	52.9
Garden -----	50	1	36	11.27	18.00	6.58	13.4
Mulford -----	43	5	39	10.15	3.88	6.27	10.8
Parker -----	20	-----	12	11.49	-----	6.83	14.4
Orchard -----	95	40	121	15.53	8.89	7.81	9.7
Vineyard -----	84	15	73	10.85	6.47	7.73	12.9
New School -----	33	3	3	8.48	4.67	7.83	22.7
Webster -----	21	4	13	12.95	6.75	9.88	10.3
Total -----	555	89	399	\$11.62	\$ 7.90	\$7.48	13.5

¹ Sixteenth annual report, 1886.

the streets the number of cases reported is small, so that a single extreme case shows plainly in the result, a fault which is eliminated when all the results are combined. We may conclude then that the workingmen of Yonkers do not pay exorbitant rates for their housing accommodations, or are at least as well off in this respect as their fellows in other places.

XII.

OWNED AND RENTED TENEMENTS.

There remains but one more Table to be presented, namely that showing the number and percentage of families and persons living in owned or rented tenements, by streets :

TABLE XXXIV.—Number of Families and Individuals Living in Owned and Rented Tenements.

Street.	Families living in				Individuals living in			
	Rented tenements.	Per cent.	Owned tenements.	Per cent.	Rented tenements.	Per cent.	Owned tenements.	Per cent.
Clinton.....	143	85.6	24	14.4	727	88.7	93	11.3
St. Mary.....	7	77.8	2	22.2	26	78.8	7	21.2
Washington ..	95	95.0	5	5.0	418	93.7	28	6.3
James.....	27	100.0	0	.0	105	100.0	0	.0
John.....	11	100.0	0	.0	52	100.0	0	.0
Elm.....	14	100.0	0	.0	71	100.0	0	.0
Palisade.....	177	97.3	5	2.7	842	95.7	38	4.3
Carlisle.....	40	88.9	5	11.1	172	93.0	13	7.0
Garden.....	136	82.4	29	17.6	607	83.8	117	16.2
Mulford.....	73	78.5	20	21.5	318	78.7	86	21.3
Parker.....	33	61.1	21	38.9	163	59.3	112	40.7
Orchard.....	153	83.6	30	16.4	712	82.3	153	17.7
Vineyard.....	123	71.1	50	28.9	588	68.6	269	31.4
New School....	48	100.0	0	.0	253	100.0	0	.0
School.....	86	100.0	0	.0	385	100.0	0	.0
Webster.....	23	62.2	14	37.8	109	65.7	57	34.3
Total.....	1189	85.3	205	14.7	5546	85.1	973	14.9

The summaries at the foot of this Table show that over 85 per cent of the families and population lived in rented tenements, while a little less than 15 per cent owned the tenements in which they lived. The largest proportion of families owning tenements is found in

Parker street and Webster avenue, the percentage being respectively 38.9, and 37.8. In five streets all the families live in rented tenements. That group of streets which shows the greatest percentage of owned tenements is the one inhabited principally by the Irish population. By the same token that evidences their thrift, the negroes and Italians seem to be the least thrifty, at least as owners of real estate.

A comparison with four other cities¹ shows that only one of them, namely Baltimore, leads Yonkers in the percentage of families owning tenements or of individuals living in owned tenements.

The following Table gives the exact percentages :

TABLE XXXV.—Owned and Rented Tenements.

City.	Per cent of families living in		Per cent of individuals living in	
	Owned tenements.	Rented tenements.	Owned tenements.	Rented tenements.
New York.....	.85	99.15	1.10	98.90
Chicago	10.23	89.77	10.29	89.71
Philadelphia....	7.55	92.45	8.67	91.33
Baltimore	19.56	80.44	21.30	78.70
Yonkers.....	14.70	85.30	14.90	85.10

¹ Seventh Special Report, etc., 1894, p. 89.

XIII.

CONCLUSION.

In the foregoing pages the effort has been made to present as fully as possible, and to analyze clearly, statistical data as to the social and economic condition of a large fraction (one-sixth) of the population of Yonkers, particularly with regard to their housing accommodations. The statistical presentation of such complex and elusive phenomena as those of social condition is, however, attended with peculiar difficulty, for such facts cannot always be expressed in numerical terms. If we do succeed in tabulating them, the appearance of scientific precision and exactness which is given by figures is too often delusive, as it is impossible to indicate properly the qualitative differences. Statistics give us only quantitative results. For instance, the size of a house affords only a rough measure of the character of the dwellings of the people, for the houses vary infinitely in material, in quality and in surroundings. If such statistics be supplemented, however, by statistics of crowding, *i. e.*, the number of families to a house or persons to a room, and further observations of the sanitary condition and cleanliness of the house, we may safely regard the results as fairly exact indices of the social condition of the people under consideration. All these facts have been presented in some detail in this article. In addition to statistics of the social condition of the people, statistics of their economic condition have been given. This was particularly necessary in a study

of housing conditions, for in no phase of life is the connection between social condition and economic well-being so close. The expenditure which a working man will or can make for a home is determined in the first instance by the amount of his income. It is therefore necessary to know the economic status of a people before we can properly judge of their social condition.

Though this article has been, of necessity, mainly statistical in its treatment, it is believed that the facts presented indicate the real condition of home accommodations of the working people of Yonkers. There are, of course, many facts, which it is not possible to present in a statistical form, which are nevertheless requisite to a thorough comprehension of the subject. There are certain pest-holes in the city, and even in the streets named, the true character of which would never appear in a table of figures. Nor, on the other hand, can statistics of the number of rooms, size of family or income indicate, even faintly, the home-like character of some small tenement or the happy family life that beautifies those three or four small rooms. It is the hope of the writer, however, that the facts presented in this article may serve as a guide to those who have the welfare of the people of Yonkers at heart. Much has already been done to benefit the working people of the city, and should philanthropic enterprise be attracted in this channel in the future, it is believed that the foregoing pages have pointed out the direction in which reformatory efforts are most needed.

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STATE PURCHASE OF RAILWAYS IN SWITZERLAND.

BY

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TRANSLATED BY

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STATE PURCHASE OF RAILWAYS IN
SWITZERLAND.

NOTE.

THE account here given of the recent purchase of the railways of Switzerland by ten states, was prepared for the Musée Social of Paris by its Swiss correspondent, Mr. Horace Micheli, and was published as Circular No. 18, Series B, of the Musée. The interest and significance of the movement, and the difficulty of securing well-arranged information regarding it, seemed to the Publication Committee to justify the presentation to the members of the American Economic Association of a translation of this excellent study. The Director of the Musée Social has kindly consented to this use of its publication. For the translation, the thanks of the Publication Committee are due to Dr. John Cummings.

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STATE PURCHASE OF RAILWAYS IN SWITZERLAND.

The Swiss people on the 20th of February last approved by a very considerable majority a law,—previously voted in both legislative assemblies,¹ and submitted to the referendum by the Federal Council,—in accordance with which the Swiss Confederation is committed to the purchase, at the earliest date possible under existing franchises, of the systems of the five chief railway companies. This vote marks the end in Switzerland of the policy hitherto consistently followed in that country of private operation of railways, and the initiation of a new regime of operation by the state. Inasmuch as the decision here arrived at by the Swiss people involves interests other than those purely political and financial,—interests of economic and in some respects even of social significance, —it has seemed to us that we might, without going too far afield in these studies, undertake to acquaint our readers with the aspects of the problem of state operation of railways as they present themselves to the Helvetian Confederacy, and the conditions under which the experiment will be tried.

¹ The federal legislative body in Switzerland (*l'Assemblée fédérale*) is referred to in the following translation as the "Federal Assembly," although the body is a double legislative body similar to the American Congress, and is composed of two Houses or Councils, the National Council (*Conseil national*) and the Council of States (*Conseil des États*),—analogous respectively to our House of Representatives and Senate. The "Federal Council" (*le Conseil fédéral*) is the executive head of the Swiss Confederacy, an executive council in charge of all federal administrative departments.—[TRANSLATOR.]

I.

HISTORICAL.—CONSTRUCTION OF RAILWAYS IN SWITZERLAND.—FIRST ATTEMPTS AT PURCHASE.

From the building of the first railroad in Switzerland, the question whether railroads should be constructed and operated by the state or by private corporations has been agitated. The first railroad built in Switzerland,—the road from Zurich to Baden (23 km.), opened on the 9th of August, 1847,—was built by a private company. But the state soon interfered, and on the 18th of September, 1849, the Federal Assembly voted to ask the Federal Council to submit to it :

1. A plan for a general system of railways in Switzerland, prepared with the coöperation of impartial experts, and designed to serve as a practical guide in undertaking work ;

2. A scheme of federal legislation for the expropriation of lands to be taken for railway uses ;

3. Reports and propositions concerning the duties of the federal government in the development of the railway system, and the nature of concessions which it ought to grant where the railways should be built by private companies.

Complying with this vote, the Federal Council consulted a certain number of experts, among others the English engineers Stephenson and Swinburne. These latter favored the construction of railways by the state, and recommended the establishment of a system extending from one end of Switzerland to the other, from

Lake Constance to Lake Geneva, with branches. Among the Swiss experts consulted, some favored a system of construction by companies, under state supervision and with a guarantee of interest by the state; others declared themselves in favor of construction by the state (Confederation and cantons.)

The Federal Council acceded to the opinion of these last, and pronounced itself in favor of railroad building by the coöperation of the Confederation and the cantons, to the exclusion of private companies. On the 7th of April, 1851, it brought forward a bill prepared to that end. The Commission of the National Council passed the bill by a vote of 6 to 5; but the National Council itself refused to follow the majority vote of its Commission, and on the 28th of July, 1852, conformably to the minority report by a vote of 68 to 22, it declared itself in favor of construction by private companies. The majority of the Council wished to exclude all coöperation of the federal government in the construction of railways, and did not even reserve to it the right of granting franchises.

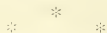
The right of granting franchises was given to the cantons by the law concerning the building and operation of railways within the territory of the Swiss Confederation of July 28, 1852. That law embraces the following provisions:—

The right to build railways within the territory of the Confederation and to operate them, lies within the jurisdiction of the cantons and may be granted to private agencies. Grants are conferred by the cantons,

but after the approval of the Confederation. This approval is not to be given where the military interests of the Confederation are menaced by the construction of the line projected. The right of expropriation is conferred upon the railways. The Confederation is to take such measures as may be necessary practically and technically to secure uniformity in construction of Swiss railways. Each company is bound to facilitate the adjustment of its system to the systems of other companies in the manner which may appear most expedient, and without so modifying its tariff rates as to discriminate against adjoining lines. Each franchise act determines conditions of redemption of the line authorized.

It was in accordance with the provisions of this statute that the several companies successively organized obtained concessions for building railways. We have not to do here with the history of the development of the Swiss railway net, nor with the organization, liquidation and fusion of the several companies. That history establishes the fact that private initiative, in spite of inevitable errors at the outset of which the responsible companies alone suffered consequences, did not fail to accomplish the task imposed upon it. Thanks to private enterprise Switzerland obtained an extensive railway net penetrating even the remotest sections of the country, although, owing to the mountainous character of the territory, the difficulties to be overcome in constructing the various lines were greater here than in other countries.

Nevertheless the act of 1852 was not perfect : it was particularly defective in defining the functions and jurisdictions of the federal government and of the cantons. Accordingly the law was superseded in 1872 by a law greatly augmenting the powers of the federal government, and expressly conferring upon it the power to grant franchises which had up to that time appertained to the cantonal governments. This law has been supplemented by several special acts ; it has remained in force up to the present time.



All the franchises granted to railways, those granted by the cantons as well as those granted since 1872 by the federal authority, contemplate the possible redemption of the lines by the Confederation at the expiration of definite periods. The expiration of one of these periods fell upon the 1st of May, 1883. At this time the Federal Council considered the question whether or not it wished to make use of its right to purchase. The results of its investigations were incorporated in a message presented to the legislative assemblies on the 6th of March, 1883, opposing the purchase of the roads. At that time the companies were far from being in so prosperous a condition financially as they are today. The Federal Council expressed the opinion that "for the time being the purchase of the roads could not be undertaken without exposing the Confederation to great financial risks, and that it was altogether superfluous to consider other reasons for or against the taking over of the railways by the Confederation."

"On the other hand" adds the report, "the safeguard of those economic and social interests which the railways are called upon to guarantee, as well as the protection of national credit, requires that the financial administration of the companies shall be legally subject to state control." It was with a view to assuming the exercise of this control that the Federal Assembly voted in the same year the first law dealing with railway accounts, which was intended to necessitate regularity in statements and accounts of the companies and to prevent the construction account, which according to the terms of the franchises fixed the minimum purchase price, from being unduly augmented. The proposition of the Federal Council that the Confederation should not at that time make use of its right to purchase, was adopted by the Council of States (*Conseil des États*) without opposition, and in the National Council by a vote of 67 to 59. A minority of the National Council favored the purchase of the *Centrale* railway system, which was at that time the most prosperous of the Swiss railways.

In the face of this decision one might have expected those favoring purchase of the railways to postpone further efforts until the next lapsing of the franchises, which fell in the year 1898. But not so. The idea of delivering the railroads over to state control was too firmly fixed in the minds of the majority of Swiss politicians; and the Federal Council itself, which in 1883 had manifested so much reserve on account of the financial difficulties in the way of operating the railways,

did not hesitate to undertake once more the task of seeking, —to use its own phraseology—“suitable ways and means of adding the railways to the public estate.”

The question of acquiring the railways through the lapsing of franchises could not come up again until the close of the year 1898. The Federal Council accordingly attempted another method of operating, which it characterized as the “*système de pénétration*,” because the method involved the entrance of the federal government into the companies in the character of a shareholder, as a result of purchases of certificates of stock from individual holders, thus enabling the government to exercise a controlling influence in the boards of directors of the companies, and eventually to bring it about that they should consent to purchase by mutual agreement. Conveyance might of course in this way be effected at any time without the delays contemplated in the franchises. Furthermore, the Federal Council then believed that the *système de pénétration* alone assured to the federal government financial advantages.

In 1887–1888, the first attempt at private purchase was made in connection with the *Compagnie du Nord-Est*. Terms of a purchase contract were agreed upon between the directors of this company and the federal government. According to this convention, the *Compagnie du Nord-Est* ceded to the Confederation all of its rolling stock and real estate, as well as its existing funds and the current receipts for the year 1887. The Confederation paid to the company in federal three per cent securities at par, 600 francs for each certificate of

preferred stock and 500 francs for each certificate of common stock. This deal aroused vigorous opposition, not only among those opposed to purchase, but especially among those having at heart the local interests of certain districts and actuated by special motives too many to be here enumerated. The Federal Council, perceiving that there was little likelihood of a ratification of this agreement in the Assembly, made a pretext for breaking off negotiations with the *Nord-Est* company, and the Assembly was not asked to pronounce judgment upon the scheme, which was simply withdrawn.

After the failure of this attempt, the Federal Council turned its attention another way. In 1889, two companies, the *Suisse Occidentale* and the *Jura-Bern-Luzerne* consolidated into one company, the *Jura-Simplon*, which became from that time on, the most important of the Swiss railway companies: the company had in actual operation a network of about 1,000 km., which extended throughout western Switzerland from Bâle to Geneva and penetrated into central Switzerland as far as Interlaken and Luzerne. The Federal Council took advantage of this consolidation to acquire 30,000 shares in the *Jura-Bern-Luzerne* Company, owned by the canton of Bern. This purchase was effected at the rate of 600 francs per share, payable in federal 3 per cent securities at 90. The Federal Assembly voted to make the purchase on the 27th of June, 1890. In that same year, and during the year following, the Federal Council purchased of other holders, in addition, 47,090 shares at

about the same price. By the end of the year 1891 it had come into possession of 77,090 shares of preferred stock in the *Jura-Simplon* Company, whose capitalization was represented by 104,000 shares of preferred stock and 245,000 shares of common stock. All of these shares carried equal voting rights. The Confederation, however, found itself in a position of especial privilege as compared with other shareholders, since the provisions of the legislative code fixing obligations and privileges of companies, included among others a provision forbidding a single shareholder to control more than one-fifth of the shares represented, and this provision did not apply to the state. The Confederation was, therefore, able to exercise in the general meetings of shareholders its full voting rights as represented by the entire amount of stock held by it, a privilege which assured to it a considerable influence in the *Jura-Simplon* company, but an influence which nevertheless has proved insufficient.

Encouraged by this first success, the Federal Council undertook to make the influence of the federal government felt in other companies. At the beginning of the year 1891, a combination of banking houses offered to sell to the federal government 50,000 shares (out of 100,000) in the *Centrale* railway company. A projected agreement between the association of bankers and the Federal Council was signed on the 5th of March. The price of the stock was fixed at 1,000 francs face value in 3 per cent federal securities. Before the Federal Assembly had been appealed to for ratifying this convention,

the management of the *Centrale* railway declared itself willing to cede on the same terms the company's entire railway system. A second plan of agreement, contemplating the purchase of 100,000 shares in this company, was signed on the 3rd of April, 1891, by the directors of the *Centrale* railway and the Federal Council. The Federal Assembly was then appealed to to choose between the acquisition of a half and the whole of the stock of the *Centrale* railway company. After a long debate they declared for the purchase of the whole system. But this resolution adopted by the Assembly was attacked through the referendum. Ninety-one thousand six hundred and ninety-eight citizens demanded that the matter be put to a popular vote. On the 6th of December, 1891, the proposal to purchase the *Centrale* railway was rejected by a vote of 289,406 against, to 130,729 for, out of 653,792 registered voters. Among those opposed to the purchase, aside from those opposed on principle to state purchase of railways, were numbered all those—and they were many—who believed that the Confederation agreed to pay for the shares of the *Centrale* railway more than their real value. As the recent vote on the 20th of February, 1898, has shown, it is to these last opponents that the rejecting majority of 1891 was due.

The vote of 1891 put an end to the so-called policy of "penetration," as well as to all attempts at purchase through private contract. It proved conclusively to the Federal Council and to the legislative Assembly that the Swiss people, to whom a question of such impor-

tance as this must necessarily in the last resort be referred for final judgment, would not favor the purchase of the railways unless they could be persuaded that the federal government was buying the roads at a low figure and on terms advantageous to them. But purchase by private agreement has always at least the appearance of being effected on terms onerous to the government, since companies interested declare themselves satisfied with the terms proposed by the government. Those favoring purchase were therefore forced to seek other means, and these they found. Two methods of taking over the roads were brought forward in the Federal Assembly, and advocated in newspapers and pamphlets, and in public meetings,—expropriation and purchase according to the terms of the franchises. Those favoring expropriation contended that the federal government was not bound to wait till the expiration of the period contemplated in the franchises before making its purchase, but that it had at any time the right to take over the roads on payment of a fair indemnity. This idea, however, did not prevail in the Federal Council. The Council prepared to exercise its right of purchase at the date designated in the franchises, that is to say in the spring of 1898.

On the day following the vote of 1891 and repeatedly thereafter the Federal Assembly charged the Federal Council not to lose sight of the question of purchase. In fact upon January 29, 1892, they adopted the following motion proposed by Messrs. Curti, member of the National Council, and Cornaz, deputy in the Council

of States: "The Federal Council is requested to institute an investigation into the various aspects of the railway problem (amelioration of existing conditions and purchase), and to present at the earliest possible moment a report and propositions concerning the policy which it proposes to follow in this affair.

Conformably to this request the Federal Council presented upon the 27th March, 1894, its first statement concerning the relations which would exist at the expiration of the franchises between the federal government and the railway companies or cantons. This report the Assembly took up in the December session of 1894. In the discussion which took place on the subject, however, many speakers on the Left displayed impatience at the dilatoriness of the Federal Council in presenting a new scheme for purchase of the railways. The Assembly accordingly once more requested the Federal Council to present as soon as possible a report upon this matter, and to investigate among other things the possibility of effecting a purchase through expropriation of the roads. At this time the expropriation of railways was favored by many members of the Federal Assembly, among others by two of the most influential leaders on the Left, Messrs. Marti and Curti.

The Federal Council set immediately to work. It began by taking several preliminary measures. Early in 1895, it presented to the Federal Assembly a bill concerning the right of shareholders in the railway companies to vote. This law, which was adopted on the 28th of June, 1895, stipulated that only shareholders who had

had their shares registered six months previously should have the right to vote in the general shareholders' meetings of the companies. In addition, the law requested the federal government and the cantons to name a certain number of delegates who should have the right to vote in the administrative boards of directors of the companies. The avowed object of this law was to diminish the influence of foreign shareholders in the Swiss railway companies. This the law failed to accomplish ; that influence, instead of decreasing, on the contrary only increased. A great number of small shareholders, the majority of them Swiss, did not wish to have their shares registered ; and were thus deprived of their right to vote. The foreign shareholders on the other hand, holding large blocks of stock fulfilled this requirement, and so acquired an influence which they had not previously possessed, in several Swiss companies.

The real purpose of the law, however, at the time when purchase of the roads was contemplated was to increase the state's influence within the railway companies. This end it attained both through the right which it conferred upon the federal government and the cantons of representation in the administrative boards of the companies and by the power which it conferred upon the Federal Council "to annul decisions of shareholders' meetings or of administrative boards which appeared to compromise or seriously enhance important general interests."

In the same year, on the 11th of November, 1895, the Federal Council presented to the Federal Assembly a

new bill dealing with railway accounts and bearing still more directly than had the preceding law upon purchase of the roads. The acts granting franchises to the railways stipulated that the indemnity price payable by the federal government in event of purchase should be twenty-five times the average annual net earnings during the ten years immediately preceding notification given by the government of its intention to purchase. This indemnity price might not in any case be less than the amount of the capital actually invested by companies. The Federal Council considered the terms "net product" and "invested capital" insufficiently defined in the franchises, and in the franchise law of 1883. The purpose of the new law was, therefore, according to the declaration of the Federal Council: "at one and the same time to require of the companies separate statements for each one of their lines; to determine in some manner binding upon the companies the amounts respectively of their net earnings and of their invested capital,—two determining factors in event of purchase; and to oblige railway companies, without postponement till the expiration of the period fixed in the franchises, to justify their statements of annual net earnings and of invested capital." Finally, it undertook further to annul the jurisdiction of certain boards of arbitration, whose function, under franchises granted to certain companies, had been to settle any disagreements which might, in event of purchase, arise between the Confederation and the companies, and to confer the jurisdiction of such boards upon the federal court.

This law dealing with railway accounts was vigorously fought in the Federal Assembly and popularly aroused great opposition, not only among those opposed on principle to purchase of railways, but as well among those who demanded that the purchase should be honestly effected without violating vested rights of shareholders in the railways. Those who took this view of the matter insisted that the law modified arbitrarily for the state's advantage bilateral contract clauses bearing the state's seal, *i. e.*, provisions in the acts granting franchises to the railways. Supporters of the law denied the assertion that the franchises constituted contracts of this bilateral character. According to them, a railway franchise is a law, an act of sovereignty by the state, which creates, it is true, the rights acquired, but a law which the state has always power to modify so long as none of these acquired rights are violated, and they maintained that the law dealing with railway accounts and statements violated no acquired right. A majority of the Assembly came to be of this opinion, and the law was adopted on the 27th of March, 1896. Submitted to popular vote in consequence of a demand for the referendum signed by 56,706 citizens, it was adopted by the people after a contentious campaign on October 4, 1896, by 223,228 yeas, against 176,577 nays, out of 714,033 electors having the right to vote.¹

¹ This "*loi de 1896 sur la comptabilité des compagnies de chemins de fer*" will be designated hereafter in the text the "auditing law of 1896."—[Translator.]

II.

BILL PROPOSED BY THE FEDERAL COUNCIL.

(*March 25, 1897*).

Approval by popular vote of the auditing law of 1896 opened the way to purchase of the railways. At first the popular campaign for and against the law was regarded on both sides as a preliminary skirmish indicative of public opinion upon the main question. Unquestionably all of those voting for the law favored purchase of the railways; a certain number of them favored purchase conditionally. On the other hand, some of those who declared themselves in favor of purchase opposed the law for reasons which have been indicated above. Nevertheless, the approval of this law was generally regarded as a real triumph of the policy favoring purchase of the railways. And, independently of the effect produced by the vote taken the law itself, since it suppressed some of the guarantees accorded the companies under the franchises, as for example the jurisdiction of boards of arbitration, to that extent redounded to the advantage of the federal government, and avoided many difficulties which had up to this time complicated the execution of purchase under the existing franchises.

Moreover, from the moment the law, voted in the Assembly, was adopted by the people, those who had previously demanded immediate purchase of the railways by exercise of the government's right to expro-

priate, rallied in support of purchase under the franchises. This is not at all surprising.

There was henceforth no longer in their opinion any reason to fear that purchase under the franchises would be effected on terms too advantageous to shareholders, subjecting the franchises of the state to too great a strain. The auditing law of 1896 gave to the federal government a sufficiently controlling influence in determining the amount of the indemnity price. Prior to the adoption of this law, the Socialist party had prepared a petition urging upon the government some initiatory action comprehending expropriation of the railways as its ultimate end. Although this proposition had obtained more than 50,000 signatures,—the number required under the constitution to force an appeal to the popular vote on any proposition originating in this manner,—it was retired by its originators, who, from motives of practical policy, did not wish at the very moment when the Federal Council itself was presenting a bill providing for the purchase of the railways and based upon interpretations of the franchises under the new law of 1896, to divide the partisans of railway nationalization upon a question of method.

The rights assured to several of the more important railway companies under their franchises expired in the spring of 1898. The Federal Council had therefore no time to lose if it wished to obtain a vote by the Assembly and the people sanctioning purchase of the road. The auditing law, adopted October 4, 1896, went into effect on the first of the following November. Some

months after, on the 25th of March, 1897, the Federal Council laid before the Federal Assembly a bill providing for the purchase and operation of the Swiss railways by the federal government, and at the same time accompanying the bill a long explanatory message.

Following is a general outline of this bill submitted by the Federal Council:—

Acquisition and Operation.—The federal government shall purchase at the earliest date contemplated in the franchise acts, and shall operate on its own account, the systems of the five chief Swiss railways, the *Jura-Simplon*, the *Centrale*, the *Nord-Est*, the *Union-Suisse*, and the *Gothard*. The lines operated by these five companies have a length of 2578 km., and include all the chief lines. Only a few standard guage lines of secondary importance, some narrow guage and some mountain roads, will still remain in the hands of their present owners.

The acquisition of the railways by the federal government shall take place conformably to federal legislation and to the franchises. However, the Federal Council is authorized at the same time, with the approval of the Federal Assembly, to effect a purchase of the lines mentioned above, by mutual agreement with the companies, conforming always to the regulations laid down for determining the terms of purchase.

The Federation shall procure the funds necessary for the acquisition of the railways and the establishment of a fund to serve as operating capital, by contracting loans on an issue of securities or annuities. Annuities

thus issued shall be retired at the end of sixty years, according to a table of amortissement drawn up beforehand.

Accounts.—The accounts of the federal railways are to be kept separate from other administrative accounts, in such a manner that the financial condition may be at any moment exactly ascertained. The net earnings of federal railways are appropriated in the first place, to the payment of interest and reduction of the railway debt. The surplus shall be applied exclusively to the credit of the federal railways and shall thus enter into the annual receipts so as to make possible a lowering of the transportation rates.

Organization of the federal railways.—Administration of the federal railways shall be the function of a special department of federal administration, and be subject to the supervision and control of federal authorities.

To the *Federal Assembly* are delegated the following powers:

1st. To examine and approve annual statements and reports concerning the conduct of the roads;

2nd. To determine finally, without right of appeal to the referendum, questions relative to the construction of new lines and the acquisition of lines already built;

3d. To name eleven members of the Administrative Council.

To the *Federal Council* are delegated the following powers:

1st. To draw up regulations for putting into effect the present law;

2nd. To name seventeen members of the Administrative Council, members of the General Board of Directors, and of the boards of directors for the several districts ;

3d. To approve the annual budget ;

4th. To submit to the Federal Assembly annual statements and reports concerning the conduct of the roads, together with propositions relative to the construction of new lines and the acquisition of lines already built ;

5th. To exercise such powers as the Federal Council already possesses with regard to private roads so far as there may still remain occasion for the exercise of these powers in the administration of the federal railways.

The *special agencies of administration for the railways* have charge of the entire railway system. These agencies are : a Railway Council, an Administrative Council, and a General Board of Directors.

*Railway Council.*¹—Members of the Railway Council are named by the cantons, one to every 50,000 inhabitants. They serve for terms of three years. The mode of selection is left for each canton to determine for itself.

The following powers are delegated to the Railway Council :

To name eleven members of the Administrative Council.

To give opinions relative to all questions of railway services which may be submitted to it by the Federal

¹This Council was not created in the law as finally passed. See below, p. 391.

Council, a cantonal government, the Administrative Council, or by any of its own members. These opinions to be transmitted to competent authorities.

To name a standing committee charged with the preliminary examination of questions and having the right to require of the General Board of Directors any information of which it may have need, and to take cognizance of any matters whatever.

Administrative Council.—The Administrative Council is made up of thirty-nine members chosen for terms of three years as follows :

- Eleven by the Federal Assembly ;
- Seventeen by the Federal Council ;
- Eleven by the Railway Council.¹

The Federal Council is to take care in making its nominations that agriculture, commerce, and industry are properly represented in the Administrative Council.

The chief functions of the Administrative Council are the following :

- 1st. To oversee the general administration of the railways ;
- 2d. To draw up the annual budget for submission to the Federal Council ;
- 3d. To examine accounts and annual reports for submission to the Federal Council ;
- 4th. To establish tariff rates and classify freight ;
- 5th. To draw up rules regulating time schedules ;
- 6th. To ratify important agreements effected with other railway companies ;

¹The method of choosing these members was modified. See below, p. 392.

7th. To lay out new lines of road and draw up such working plans for new constructions as involve any considerable expenditures upon station plants; further, to prepare plans for construction work and important improvements in the system of roads operated;

8th. To approve building contracts, and deliveries involving sums exceeding 500,000 francs;

9th. To ratify the nominations of superintendents, the amounts of their salaries with limitations fixed by law and the budget, and to determine in general the conditions under which employees shall work;

10th. Finally, to investigate propositions relative to the building of new lines and to consider modifications and amendments of legislative enactment dealing with the federal railways.

The Administrative Council shall select a standing committee which shall make preliminary examinations of all questions. This committee shall consist of six members and of it the president of the Administrative Council shall be chairman.

General Board of Directors.—The General Board of Directors consists of from five to seven members. These members are named by the Federal Council, and the Board holds its meetings in Berne. Members are elected for terms of six years. The president and vice-president are elected for terms of three years, by the Federal Council.

Saving the functions of the Federal Council and of the Administrative Council, the General Board of Directors controls the general management of the roads.

The Board makes up the annual budget, composes accounts, and makes reports concerning management of the roads. It prepares all matters for submission to the Administrative Council and executes decisions. It draws up regulations establishing tariffs, and time schedules, controls the operating receipts and the railway plant in general. Subject to approval of the Administrative Council it concludes agreements and appoints officials who are together with local superintendents in the several districts, directly responsible to the Board.

Districts.—The federal railway system is divided into three districts¹, with central offices in Lausanne, Luzerne, and Zurich. In charge of each district is placed a *district board of directors*, composed of three members elected by the Federal Council. Each of these local boards administers affairs within its respective district, save where the General Board of Directors exercises control. More specifically, these local boards have in their charge the freight-hauling, train-service, direction of work-shops, etc., etc.

General Provisions.—Only citizens of Switzerland, legally settled within Switzerland, may be employed on the railways. Officials, employees, etc., are appointed for terms of three years. All officials, as well as members of the Administrative Council, the General Board of Directors, and the local board, may be removed by the authority from which they derive their appointment.

¹ This number was raised to five in the law as finally passed. See below, page 394.

A bureau of pensions and relief shall be created for officials and permanent employees. The expense of maintaining this bureau shall be equally apportioned between the beneficiaries and the railway department.

The Federal Council shall draw up regulations governing this bureau.

The existing bureaus for granting pensions and assistance, the management of which shall pass into the hands of the federal department administering the railways, may, provided the Federal Council approves, continue to operate as heretofore with their existing membership. Members of such associations may not, at the same time, be members of the general bureau for granting pensions and relief.

The Federal Council shall take necessary measures for the establishment of sick insurance bureaus.

* * *

Such were the essential features of the bill proposed by the Federal Council. Let us examine now the chief arguments brought forward in the official message accompanying the bill in advocacy of purchase and operation of railways by the federal government.

Necessity for consolidation of Swiss railway systems formed the basis of the first argument. Operation of the more important Swiss railways, insists the message, is now in the hands of five companies. The frequent dealings which they have with one another occasion great waste of effort and time, and an expense absolutely unproductive. Each operating company is forced to have, in connection with all departments of its serv-

ice, special bureaus, maintaining numerous corps of employees. Especially is this true in the administration of finances, since each company must devote a good deal of time to estimating amounts due it from other companies, and to verifying statements received from other companies of amounts due them, and to investigating the numerous occasions of disagreement which present themselves. All this labor, which, economically speaking, is absolutely unnecessary, might be avoided or in every instance simplified by consolidation of these diverse functions of general administration under one management. A reduction in working force and a material economy in expense of general operation would result from such a consolidation.

Consolidation would assure advantages in maintenance and superintendence of lines, security of traffic and operation itself. Under centralized administration time schedules might be improved, notably with reference to the international traffic, since such an administration might more easily than one divided among five independent companies, come to an understanding with foreign companies. The message maintained further, that local service might also be improved, since under single administration by the state unproductive lines might be subsidized out of profits earned on productive lines. "Private companies, on the other hand, give best service to the productive lines; and, on lines of secondary importance, restrict their service to what is indispensable: at times, indeed, they grant no more than the minimum service required under their fran-

chises, since anxiety to earn dividends dominates all other interests."

To these advantages naturally connecting themselves with consolidation of the railway systems, purchase of the roads would therefore, according to the message, add those advantages attendant upon administration by the state. Henceforth the state would occupy itself solely in assuring an administration advantageous to the public and the general welfare of the country; while the private companies are, in their very nature, necessarily forced to seek above all else to earn dividends for their shareholders.

Pursuing its argument in favor of state operation of railways in detail, the message examined the question of rates. The state, from motives which have just been indicated, is better able, the message declares, than the companies to effect desired tariff reforms. The first reform to be effected should be the introduction of uniform rates throughout the entire system of national railways. Under the present system, ordinary passenger and freight tariff rates differ, and often very markedly, from company to company. Great complications arise from this, embarrassing to the public as well as the companies. The first duty of the state should be to establish uniform tariff rates throughout the entire system. The message left it to be inferred that the new tariff would be calculated on the basis of the lowest tariff rates actually in force at the present time. However, it should be remarked that the bill contained no guarantee in this respect.

The message insisted further upon the necessity of

gradually paying off the debt contracted in the purchase of the Swiss railways. The message undertook to demonstrate that the majority of the states bordering upon Switzerland would, towards the middle of the next century, possess unencumbered railway systems. In France, it continued, the roads would at the expiration of franchises, without payment of any indemnity whatever to the companies, revert to the state. To attain that end, France imposed upon herself each year great financial sacrifices. Other states, already in possession of their railway systems,—Prussia, Austria, etc.,—paid off each year part of their railway debt, and their lines would, by the middle of the next century, be either entirely unencumbered by mortgage liens, or at least be relieved of a great part of the debt which weighed upon them to-day.

Switzerland ought to follow their example; if she did not, she would find herself by that time at a disadvantage in her relations with other countries. In fact, as soon as the neighboring states should have a system of railways unencumbered by debt they would be able to reduce their tariff rates considerably, since they would not have occasion to derive from these lines a revenue more than sufficient to meet operating expenses; and they would no longer be under the necessity of paying interest upon capital originally invested. If Switzerland should not be able to reduce her tariffs to the same extent, it would be impossible for her to struggle against foreign competition and traffic would leave her rails to seek the ways offering lowest rates. The necessity of paying off the

railway debt ought to induce the Assembly of the Swiss people to vote immediately for purchase of the railways. Postponement until the end of the succeeding term denoted in the franchises, namely, till the year 1913, would make it impossible for Switzerland to pay off the whole debt by the middle of the next century.

Another argument which, according to the message, militated in favor of the purchase, was the necessity of freeing the Swiss railways from foreign influence, to which they were subject owing to the fact that a great portion of the shares was in the hands of foreign capitalists. It was noted above that the law of 1895 obliged holders of annuities, if they would secure their rights to vote in the general meetings of shareholders, to have their shares registered by name. One may read the result of this registration in the following table, which indicates how the shares were distributed between Swiss and foreign holders :

	Jura-Simplon.	Nord-Est.	Centrale.	Union-Suisse.	Gothard.
Total shares.....	349,600	160,000	100,000	80,000	100,000
Total shares registered..	181,670	68,527	34,464	28,900	27,694
Shares in hands of holders domiciled in Switzerland.....	147,844 ¹	31,427	14,050	20,818	1,347
Shares in hands of holders domiciled in foreign countries.....	33,226	37,100	20,414	8,082	26,347

From these figures it appears that, while the relative number of shares registered in the hands of foreigners

¹ 77,090 held by the federal government.

does not constitute a great portion of the total shares, it is nevertheless much greater when compared with the total shares registered; and since by virtue of the law of 1895 only registered shares carried voting rights in the general meeting of stockholders, it followed from the enforcement of this law, though undoubtedly contrary to the intention of the Swiss legislature, that foreign shareholders constituted a voting majority in the general meetings of three companies, the *Nord-Est*, the *Centrale* and the *Gothard*.

The Federal Council made it appear in its message that, with all the strict control exercised by the federal government over the administration of the companies, such a state of affairs was unhealthy politically and humiliating to Switzerland. Moreover, it was, in its financial aspects, dangerous, because the earnings realized from Helvetian railways, for the most part, left the country, emigrating to foreign lands in the form of dividends, instead of being laid out for improvements of railway service and payment of sinking fund annuities, and thus they contributed to the impoverishment of the country.

The message contrasted with the inconveniences of private operation the advantages which, in the eyes of those supporting the new policy, were inherent in operation by the state. It insisted especially upon the fact that according to the bill submitted to the Chambers, state operation of the railways could not become involved with the general administration of public finances. The bill effected a complete separation of the

railway accounts from accounts of other administrative branches. There was, therefore, no occasion to fear lest the department administering the railways should be exploited as a source of revenue to the general state treasury. Net earnings resulting from operation of the railways would be devoted exclusively to the payment of interest and the reduction of the railway debt, as well as to improvements in the service (reduction of tariff rates, etc.).

The message embodied, with these general arguments, others intended to win over certain classes. It assured the railway employees that they had everything to gain in passing over into the service of the federal government: "Private companies are naturally disposed to reduce as much as possible that item of expense which is made up of wages and salaries; it is worthy of note that these companies, as a rule, pay high salaries for the performance of certain functions, and to make up for these expenditures they economize upon wages of common employees, who, since they are very numerous, occasion the great bulk of expenditures.

"The state will not be actuated solely by motives of profit and loss; it will see to it that each employee or workman has a sufficient wage; salaries will no longer vary from line to line; inequalities which result from the financial condition of the companies, and not from local conditions, will disappear. It is absolutely certain that this equalization may be effected without occasioning a reduction in real wages. The reduction in the number of employees, which would accompany consolidation in

railway operation, would furnish the means necessary to cover additional expenditures necessitated by equalization of salaries. Let it be constantly borne in mind that this reduction in the number of employees will take effect without causing discharge *en masse*, also without reduction of salaries; that there will be provided at the same time new employments.

"State operation of the railways," continues the message, "will put an end to the protests occasioned by imperfect enforcement of the federal law of June 22, 1890, regulating terms of service for railway employees.¹ The enforcement of this law, as is well known, encountered active resistance from several companies, necessitating energetic police service to enforce, little by little, observance of these legal provisions. Here again it was profit-seeking considerations which led the companies to make resistance; state operation of railways would tend to ameliorate in this respect also the condition of employees."

As to the situation in event of purchase of funds for pensioning retired employees, the message gives also the most reassuring promises.

So far as superannuation funds are concerned, it is certain, affirms the message, that the federal government, will assure to its own railway employees conditions no less favorable than those maintained by the companies. These obligations the state may assume without having to take into account considerations of

¹ This law imposed upon the companies the obligation of giving their employees 52 days of rest per year, of which 17 must be Sundays.

profits: the ordinary contributions made by the companies to these funds have been reckoned in determining net-profit, under the franchises among operating expenses: there would therefore not be any added expense to bear on this account. The state has also to avow its well-wishing solicitude concerning sick insurance funds established by railway employees; these funds, in fact, have not attained, in comparison with the relief funds of employees, that degree of development wished for.

* * *

Examination in detail of the financial questions involved in the scheme for purchase of the railways takes us somewhat afield from the immediate subject of this study. We shall therefore confine our attention to a few general observations.

According to the terms of the franchises, the purchase price to be paid by the federal government to the railways was fixed at twenty-five times the average net earnings during the ten years immediately preceding the date of purchase. In no case could the price be less than the original expense of construction. The roads and all their branches must be delivered to the federal government *in perfectly satisfactory condition*. Failing this, the federal government might make a proportional reduction in the purchase price.

Obviously, several of these provisions gave room for some discussion. The working basis upon which the purchase price rested being *net earnings* and *original expense of construction*, the first question arose with

reference to the definitions of these factors. As we have seen above, that was the object of the auditing law of 1896. Moreover, it was essential to establish the precise significance of the phrase "*a perfectly satisfactory condition.*" According to the interpretation given to this phrase, the estimated amounts of the deductions to be made from the purchase price at the expense of the companies, and consequently the purchase price itself, were materially affected.

By a series of calculations, the message from the Federal Council estimated the amount to be paid to the companies, as follows :

	Francs.
Jura-Simplon.....	288,154,203
Nord-Est.....	244,434,347
Centrale.....	177,357,946
Union-Suisse.....	81,858,654
Gothard.....	172,371,182
Wohlen Bremgarten (a small branch of the Centrale).....	208,446
Total.....	964,384,778

One factor among others in this relatively low valuation had been estimated indemnity deductions from purchase price to the amount of 74,554,000 francs, representing the difference between the actual condition of the roads, and the perfectly satisfactory condition designated in the franchises.

Calculating on the basis of these prices, the rating of each company's shares give the following values. We add, for purpose of comparison, par value of shares and their approximate average values, these last named values based upon quotations in the Swiss Stock Ex-

change before the promulgation of the message of the 25th of March, 1897.

	Purchase Valuation. Francs.	Par Value. Francs.	Market Value. Francs.
JURA-SIMPLON :			
Preferred stock	500	500	555
Common stock	120	200	190
NORD-EST :			
Common stock	338	500	665
CENTRALE :			
Common stock	543	500	705
UNION-SWISSE :			
Preferred stock	500	500	---
Common stock	315	500	475
GOTHARD :			
Common stock	620	500	82

From this table it appears that the valuations given by the Federal Council were very much lower than the prices quoted on the stock exchange and even, in the case of certain shares, below the par value of the shares. It should be noted, further, that the valuations were not final. Disagreements between the Federal Council and the companies were to be submitted for settlement to the Federal Court.

These were the prices which the Federal Council took as a basis for constructing its budget for the future operation of the federal railway system. In its message, the Council drew up three separate budgets on the supposition that the federal government would be able to procure the funds necessary for effecting the purchase at rates respectively of 3 per cent, 3½ per cent, or 4 per cent. Upon the supposition generally made during the

discussion, of a loan at par, paying interest at the rate of $3\frac{1}{2}$ per cent, the Federal Council estimated that the net receipts from operation of the railways would leave, after the payment of interest, a free balance of 6,654,681 francs. Of this balance, the sum of 4,546,599 francs would be devoted to the payment of an annual sinking fund necessary to extinguish the railway debt in the course of the next sixty years. There would remain, therefore, a clear balance of 2,108,082 francs. The Federal Council, according to its estimates, concluded that the federal government would be able to accomplish the payment of the debt which, according to the Council, was one of the chief objects of nationalization; the state would be able, moreover, to devote a sum of not less than 2,000,000 francs per year to improvement of the service and reduction of tariff rates. We shall see further on that the valuations of the Federal Council were disputed by competent critics. It suffices for the present to have indicated the principal arguments by which the Federal Council advocated the adoption by the Federal Assembly of the bill authorizing purchase of the railways.

III.

PURCHASE CONSIDERED IN THE FEDERAL ASSEMBLY.

Had any one prejudged the ultimate success of the purchase project from the support which public opinion at first accorded the bill submitted by the Federal Council, such a one must have greatly misjudged the issue. This support was in fact of a very indifferent character, even among many conservative "acquisitionists,"¹ while those opposed to purchase manifested intense hostility. Opposition to the scheme did not gather strength solely among those opposed to acquisition and operation of the railways by the state. At the start the opposition forces saw their ranks increased by the accession of all those who although they favored state purchase of the railways in theory, felt nevertheless dissatisfied with the manner in which purchase was about to be effected. Moreover, the measure proposed clashed with certain sectional, local and private interests, thereby giving occasion to delegates representing these districts for making energetic protests. As soon as the scheme became known, therefore, it became the object of severe criticism in the newspaper press generally.

¹ "*Rachatists*." To this word is appended the following footnote:

"The reader must permit the use of the terms '*rachatists*' and '*antirachatists*,' which, although they are not French, were currently employed during the campaign for nationalization of railways in the newspapers and pamphlets of French Switzerland; and also it must be confessed, in many French papers."

Inasmuch as the question must undoubtedly come before the people for final judgment, it was not enough for the Federal Council to secure a majority in the Swiss Federal Assembly, which never withholds its support from the government on issues involving such far-reaching consequences. It was much more important to disarm that opposition which manifested itself popularly, and to identify as many interests as possible with the scheme. It was to this end that the Federal Assembly applied itself in discussing the purchase act during the sessions of July and of September and October, 1897.

As local interests played a chief part in this discussion, we shall not consider it in detail, but shall take up only those arguments brought forward by the opposition, which involve general principles. It will suffice for the present to mention the chief modifications which were introduced by the legislative Assembly into the original scheme as it came from the Federal Council; they, for the most part, concerned the organization of the future federal railway system.

The Railway Council was abolished. It was regarded as a useless bit of mechanism in view of the unimportant duties conferred upon it. It will be remembered that according to the projected law this Council possessed only advisory authority, a body charged with the duties of giving its opinion upon certain questions, which if expressed were in no way binding upon the agencies of administration.

As a result of the abolishment of the Railway Coun-

oil, the method of nominating the Administrative Council was modified. According to the proposed scheme, the Administrative Council was made up of 34 members, nominated as follows :

Eleven by the Federal Assembly,

Seventeen by the Federal Council,

Eleven by the Railway Council.

The cantons thus exerted their influence upon the administration of the federal railways indirectly through the intermediary of this last body. The Federal Assembly preferred to substitute for this indirect method direct action on the part of the cantons; and, therefore, the membership of the Administrative Council was increased to 55, of which 25 were elected by the federal government, 25 by the cantons, and 5 by the local boards of directors mentioned above. This right given to the cantons, of electing 25 members to the Administrative Council, was a concession to the Federalists, who thought the management of the railways given over too exclusively to the central government.

An interesting debate took place in the National Council upon certain propositions emanating, on the one hand from the Socialist deputies, and on the other from those deputies who represented particular commercial or industrial interests. These deputies proposed to the government that the right to nominate a portion of the members of the Administrative Council be conferred upon certain unofficial organizations. The National Council agreed, at the first hearing, that agrarian, commercial, industrial, and labor organizations, together

with the railway employees, should have the right to designate 25 representatives in the Administrative Council of the railways; in this case the number constituting the Council would in consequence be increased to 80. On a reconsideration at a second hearing of this new provision it encountered energetic opposition. Several prime movers in the general scheme pointed out that neither the constitution nor statute law recognized the organizations upon which it was now proposed to confer the right to elect members to an official board of public administration. They declared, therefore, that the right thus conferred was an unconstitutional one. Moreover, they directed attention in the National Council to the great difficulties particularly attendant upon the granting of such a right as this. What associations should be allowed to elect delegates? What control should the state exercise over the membership of these associations and over elections which they must hold? In the absence of any sort of legal organization was there any assurance that these associations would fairly represent all, or even a majority, of those whose interests were involved? Such inquiries were calculated to spread contention.

In the face of these objections, the National Council revoked its decision, suppressing the provision for 25 additional members elected to the Administrative Council by unofficial organizations, and leaving the Council once more with 55 members elected as indicated above. This debate gave to partisans of compulsory industrial organization an opportunity to break a lance in their

own cause, since it enabled them to insist upon the necessity of some industrial organization with a recognized legal status. Although these unofficial organizations were denied any direct representation in the Administrative Council, the Assembly stipulated that the Federal Council should, nevertheless, in the choice of its 25 delegates, have a care that agriculture, commerce, and industry should be equitably represented. Along with this guarantee of representation was inscribed another, urged upon the Assembly by the general secretary of the railway employees' union, M. Sourbeck, National Deputy, and endorsing representation in the Administrative Council of railway employees.

Let us turn to the modifications which the Federal Assembly effected in the plan submitted by the Federal Council. That plan divided the railway system into three districts, with central officers at Lausanne, Luzerne, and Zurich. The cities of Bâle and of Saint-Gall, where the central offices of two railway companies (*Centrale* and *Union Suisse*) are at present located, protested vigorously against the new disposition of offices, and were unwilling to lose, as a result of the purchase act, the benefits derived from the present location of offices, and the influence over the administration of the railways in their respective vicinities which that location gave. The Federal Assembly, in compliance with the demands made by the authorities and deputies of the two above-mentioned cities, created five railway districts, with central offices at Lausanne, Bâle, Luzerne, Zurich, and Saint-Gall. General administration of the

entire federal railway system was centered at Berne. In making these decisions the deputies were actuated solely by a desire to avoid alienating certain regions. Obviously the Assembly, when it increased the number of districts to five, renounced those benefits which the Federal Council hoped to obtain from a simplification of administration. In place of the five administrations of the present companies, there would be henceforth six,—a General Board of Directors and the five district boards.

As drawn up in the Federal Council the projected law placed at the head of each railway district, a local board of directors, nominated by the Federal Council. To each of these local boards the Federal Assembly attached a district council of from 15 to 20 members, 4 of whom should be appointed by the Federal Council and from 11 to 16 by the cantons comprised within the districts respectively. The creation of these councils was another concession to the Federalists, though a concession more apparent than real, since the powers conferred were insignificant. Upon these councils was conferred the right to express opinion upon all questions involving railway service, especially questions relating to time schedules and rates; the right to approve budgets and annual accounts drawn up by the district boards of directors for submission to the Central Board of Directors; the right to sanction credit items not incorporated in the budget, provided the sum total so approved did not exceed in the annual budget 100,000 francs. Finally, each district council had a

right to nominate one member to the Administrative Council.

In short the organization of the future federal system, of railways, with all its apparent concessions to the cantons, remained highly centralized. All important determinations were within the jurisdiction of the General Board of Directors and the district boards, and the members of all these boards were directly responsible to the Federal Council, which possessed the power of appointment, of control, and, should it so happen, of removal.

In addition to these amendments relating to the organization of railway administration, the Federal Assembly introduced other provisions relative to the construction of new lines. It was necessary to calm the apprehensions of certain regions interested in the acquisition of new lines and fearful lest their chances should be compromised in conveyance of ownership to the state. Of these projects, the most important was one involving the construction of a tunnel through the Simplon which should connect the canton of Valais directly with Italy, and in the construction of which all the French provinces of Switzerland, especially the cantons of Voud and Valais, were intensely interested. The *Jura Simplon* Company being on the point of undertaking the construction of this tunnel at the moment when the project of purchasing the roads made its appearance, the Federal Assembly introduced into the law a new article which stipulated that "the federal government, as successor to the rights of the *Jura Simplon* Company,

engaged to continue the railway line of the Simplon, provided the subsidies stipulated on the part of the Swiss cantons and municipalities, and the Italian government and municipalities should be acquired."

Similar assurances were given to the cantons of West Switzerland, which for a long time had desired the construction of a road across the Alps of West Switzerland; but which, less far advanced in their project than the cantons of the Simplon, had been unable as yet to agree upon any definite plan. The law therefore confined its assurances to a declaration that the federal government favored, as in the case of the Simplon pass, and to the same extent, efforts directed to the construction of a railway across the Western Alps. Finally, the law gave to the canton of Saint-Gall a special guarantee for the construction of a railway which the inhabitants of this canton had very much at heart, namely, the Ricken line.

This was not all. The scheme of the Federal Council, it will be remembered, contemplated the purchase of those lines only which belonged to the five chief railway companies of Switzerland and comprised the important roads. Acquisition or construction of lines not included in the original purchase act must in future be accomplished through special legislation submitted to the referendum. A certain amount of discontent manifested itself in those sections which found themselves dependent upon secondary lines included among those not purchased by the federal government. As soon as the principal roads came into the possession of the state, it was feared, lines ordinarily less productive, remaining

in the hands of small private companies, would find themselves particularly embarrassed, and the operation of these roads must under those conditions suffer. Representatives from these sections made great efforts to bring it about that these lines of secondary importance, or at least some of them, should be purchased at the same time with the main systems. But they encountered the opposition of the Federal Council, particularly of the chief of the Department of Finance, who had decided to restrict the operation of the purchase act for the time being to lines of good earning capacity. The Federal Assembly, however, conceded to those interested in secondary lines an article stipulating that the Federal Council might acquire successively the secondary lines subject to the approval of the Federal Assembly alone, and without submitting such enactments to the referendum.

Such were the principal modifications introduced by the Federal Assembly into the law as it had been formulated in the Federal Council; they were very differently regarded respectively by those favoring and those opposing purchase. Those favoring purchase boasted of the work done in the Federal Assembly as a happy compromise calculated to unite all sections of the country in a great scheme of nationalization of the railways by purchase; others characterized the work as a bit of humbugging not calculated to improve the law, but simply to gain votes, and effect its acceptance through a coalition of interests. What is certain is that the end sought by the majority was attained, and that the amend-

ments introduced in the Chambers did silence a great part of that opposition which was very active at first; but in effecting this quietus the majority also appealed to party allegiance and discipline. A single deputy only among the Radicals, M. Gobart (Berne), voted against the bill. In the National Council the parliamentary majority which accepted the bill was considerable, the vote standing 98 to 29, and somewhat less, 25 to 17, in the Council of States. The opposing minority was made up for the most part of Catholic and Federalist members on the Right, and of the Liberal party of the Centre; the supporting majority comprised all the Radicals on the Left with the exception of one deputy, all the Socialists of the extreme Left, a part of the Centre, and a small fraction of the Right.

IV.

PROPOSITION FOR PURCHASE OF RAILWAYS BEFORE THE PEOPLE.

The law authorizing purchase of the railways was finally voted in the Federal Assembly October 15, 1897. But it will be borne in mind that every law adopted in the Federal Assembly must under the Swiss constitution be submitted to popular vote, if within three months after the official publication of the law thirty thousand electors demand the referendum. Immediately upon the passing of the law in the legislative body, authorizing purchase of the railways the opposition organized throughout all the cantons a great petition bearing the number of signatures necessary to occasion a referendum. This number was obtained and even greatly exceeded. Within the legally prescribed period divers committees of "anti-acquisitionists" deposited with the federal chancellor the signatures of 85,891 electors demanding submission of the law to popular vote. The Federal Council fixed the date for taking this vote on February 20, 1898.

The campaign for and against purchase had begun in the press and in public meetings during the progress of the discussion in the Federal Assembly. Discussion became more active as soon as the law entered upon what is known in Switzerland as the "referendum period," that is the period during which each citizen may express his opinion upon the subject of any law

upon which, thanks to the *referendum*, he may cast a vote. Soon after the meeting of the Assembly the several parties called general caucuses of delegates to agree upon policies which they should respectively adopt with reference to the law.

The Socialists were the first to call their caucus. The Socialists have been for many years in Switzerland most ardent champions of state purchase of railways, in which they see a realization of one article of their programme. It is true that the law as voted in the Assembly was only half satisfactory to them. They protested especially that the law gave too much power to the Federal Council, centralizing in its hands too completely the supreme direction of the federal railways. They would have preferred to have the administrative agencies entirely independent of political authority, and in part at least, directly elected by the people. Propositions to that end had been introduced into the National Council by two of their leaders, Messrs. Curti and Wullschleger; but these had been rejected by the majority.

Nevertheless the Socialists, in spite of objections made by them to the law in detail, believed it contrary to their principles and inconsistent with their previous record to reject a law which took out of the hands of private companies a property representing at the lowest estimate a value of one milliard francs, for the purpose of giving this property over to the state. On November 14 they came together at Zurich to discuss the matter. M. Wullschleger, member of the National Council, presented a report in favor of purchase. He did not dis-

semble his dissatisfaction at the poor support accorded by the majority in the Assembly to his propositions, which had been calculated to introduce into the administration of the federal railways a little democracy. He criticised the projected organization as too bureaucratic, and complained that the various unofficial and industrial organizations, especially labor organizations, should find themselves deprived of their right to designate certain members of the Administrative Council. He recognized with equal clearness that the first effect of the law must be to strengthen the Radical party of the government at the time in power.

“State purchase of railways,” he continued, “has always occupied an important place in Socialist demands. It is above all else important for us that the railways be taken out of the hands of the great companies; for we shall never gain any influence over them unless it be through the state. It is above all important that we win out of ‘capitalism’ as conquered territory a domain which has up to the present time remained subject to its sway. The only motive which might lead us to reject the scheme for purchase of the railways is the fear that the state might pay shareholders in these companies too dearly. But, thanks to the auditing law of 1896, permitting the federal government to purchase the railways at a fair price, there is no longer any occasion to fear an over-valuation. Politically the purchase must undoubtedly redound immediately to the disadvantage of the Socialists, as well as other minorities. Socialists,” he added, “do not look at matters from the point of view

occupied by the conservative opposition. They do not regard the past, but the future. Momentary advantages accorded to political adversaries will not prevent Socialists coming into possession of power some day."

Supported in these opinions Mr. Wullschleger proposed to the meeting a resolution of considerable length favoring purchase of the railways as an essential article in the socialist programme, and as a victory won against capitalism: he instructed the party committee to undertake active propagandist measures in support of the law. This resolution was voted unanimously without discussion.

From this action taken by the Socialists let us turn to that taken by the Radicals, who were at the time in power. They controlled a large majority in the Assembly, and in the Federal Council six out of seven members belonged to the party. Moreover, while it happened that the single representative of the catholic minority in the executive departments, M. Zemp, member of the Federal Council, in his capacity as chief of the Department of Railways, had introduced into the Federal Council and defended in the assemblies the bill drawn up in his own bureaus, it was still none the less true that state purchase of the railways must be considered an achievement of the Radicals. In fact, the party programme, especially in the German cantons of Switzerland, had favored state intervention on a larger and larger scale in the domain of industry.

All this does not at all signify that opposition to the law within the party itself, especially in French can-

tons, was inconsiderable. Radical deputies from these districts manifested at the start, considerable indifference, some of them even hostility, to the project; but the discussion in the Chambers and the groupings of the party organizations which took place at the same time, overcame their hostility and changed their indifference into enthusiasm, all the more exuberant because newly aroused. The result, as we have seen above, was that in the two Councils but one Radical deputy, M. Gobart, voted against the purchase; and in the public agitation over the question only one prominent Radical, M. Numa Droz, ex-President of the Confederation, had courage, by the publication of an able pamphlet, and in a series of meetings held in the principal villages throughout the French cantons, to persevere against party orders in opposing state purchase. M. Droz induced a great many belonging to the Radical party in the region where he labored, to follow him into the adversaries' camp. But the final official committee of the Radical party declared itself unanimously in favor of the scheme, and its delegates came together again in a general meeting on the 12th of December, at Berne. Messrs. von Arx, deputy in the Council of States from Solense, and Jordan-Martin, deputy in the National Council from the Canton Vaud, presented reports favoring purchase; and brought forward reasons analogous to those found in the message of the Federal Council. The following resolution was then voted unanimously:

“The Assembly of Delegates from the Swiss Radical Democratic party met at Berne, October 12, 1897,

urges the Swiss people to accept the law providing for the purchase of the railways. Profoundly convinced of the advantage which will follow from state purchase of the railways, not only to commerce, agriculture, and to large and small industries, but also to the Swiss people in general, this meeting of delegates declares its support of the law.

"Together with all other important ways of communication, railways ought to belong to the state. They cannot longer remain in the hands of shareholders, for the most part foreigners.

"Solicitude for our economic independence demands immediate acquisition of the lines of our chief railway systems, which will enable us to organize the operation of these lines on a rational, economic basis. Purchase, furthermore, is a political necessity of the first order."

The opponents of the purchase, on their side, came together to organize for the struggle. They were, for the most part, members of two parties, the Catholic Peoples party and the Liberal, or Conservative Liberal party.

In the Assembly, the deputies of the Catholic Right furnished the majority of those opposed to the purchase law. They were actuated by motives of principle. Opposed to too great extension of the powers of the federal government, they opposed purchase of the railways as an act placing a dangerous tool in the hands of centralized political power. Moreover, as supporters of prudent and economic administration of public finances, they believed that the purchase and operation

of railways by the state must involve the Confederation in too great risks, which they preferred to leave to private companies to encounter.

A part of them, however, were won over to the support of the law, for diverse reasons. Some came under the personal influence of M. Zemp, who was, before he became a member of the Federal Council, a leader of the Catholic Right. Others represented cantons which were, or thought they were, particularly interested in effecting the purchase. There resulted, therefore, upon this matter a schism of the Right. While the majority of the party opposed the law as presented by the Federal Council, some deputies, particularly those from the cantons of St. Gall and d'Argovie, accepted it and even took an active part in its support during the campaign.

Nevertheless, a great majority of the Catholic Swiss Federalists took a negative attitude. On the 16th of December, a meeting of the delegates of the Catholic party took place at Berne, and, after a long discussion, resolved, by a vote of 74 to 8, to urge rejection of the purchase law on economic and political grounds.

Of all the great political parties in Switzerland, the organization of the Liberal Conservatives alone does not extend throughout all the cantons. It is recruited from a certain member of cantonal groups which are in general accord upon federal questions, and recruits itself especially in protestant cantons,—in Berne, Bâle, Zurich, Vaux, Neuchâtel, Geneva, etc. Opposed to state socialism and in favor of economic freedom, in-

heriting along with the Catholic party the Federalist traditions in Switzerland, this party naturally opposed state operation of railways. Accordingly, the majority of deputies representing this party in the Federal Assembly voted against the law presented by the Federal Council. And in all the cantons the political organizations and papers advocating the Liberal Conservative policy declared themselves almost unanimously opposed to the purchase, and conducted an energetic campaign to bring about rejection of the law by popular vote.

* * *

Having noted briefly the disposition of the several parties, we turn now to a consideration of the principal arguments brought forward by those opposed to purchase. These arguments were of two sorts; some of them political and others economic or financial.

Political arguments. It is well known that there are at work in Switzerland two political tendencies, which manifest themselves in the consideration of almost all questions,—the tendency toward centralization or consolidation, and the tendency towards federalization. The Centralizationists seek the progressive unification of Switzerland, and wish, to the detriment of cantonal integrity, to delegate to the central authorities, that is to say, the Federal Council and the Federal Assembly, the greatest possible power. The Federalists, out of respect for Swiss historical tradition, seek to reserve to the cantons the exercise of those rights secured to them under the constitution of 1874, and they contest step by

step any action which threatens to disturb the balance of power between central and local authorities. On the issue of state purchase of railways these two tendencies found themselves once more arrayed against one another. It is true that nationalization did not deprive the cantons of any rights,—the cantons had had no rights of interference in railway matters since 1872. But the Federalists feared lest purchase of the railways should disturb the balance of power between the Confederation and the cantons by considerably augmenting the powers of the federal government and placing in the hands of federal authorities all the interests allied to railway operation. Operation of the railways must render difficult, even in other spheres, cantonal resistance to encroachments of the central authorities.

Moreover, the organization of the federal railways, as provided in the law, was just as unsatisfactory to Federalists as to Socialists. Unquestionably the Assembly made certain concessions to the first in permitting direct representation of the cantons in the Administrative Council¹ and in the creation of local boards elected for the most part by the cantons immediately interested. But the authority of the Administrative Council, and especially of these local boards, was greatly restricted. The majority of the Assembly had refused to confer upon these bodies the right to elect the General Board and the district boards of directors, and had given that power to the Federal Council. The Federalists impeached the law on the ground that it gave over to the

¹ See above, page 395.

central political authority the new powers created and conferred upon the state in the purchase of the railways; and these new powers ought at least, they thought, to have been divided between the federal government and the cantons.

To these specific objections were added others more general in their character, which had to do with the principles involved in the state assumption of railway ownership. The state, it was said, is not itself a proper agency of such industrial and commercial administration as is required for operation of railways. It is a mistake to subject the state finances to all the risks inherent in such a combination. The state exceeds its proper function when it constitutes itself superintendent of transportation; its function consists in defending public interests by exercising an effective surveillance over the administration of private companies. Public interests are better served if the federal government has extensive rights of control than they would be if the state itself operated the railways. Thanks to rights of control, the state would unquestionably be able to obtain concessions in favor of the public which the state would not itself, perhaps, accord where the concessions bid fair to occasion a diminution of the state's own revenues or an increase in the state's own expenditures.

Moreover, urged those who opposed the principle of state purchase, it is to be feared that politics will exercise an unfortunate influence over the administration of the railways. A good administration of the railways must be one serving solely the general welfare

of the country; the lines must be operated on business principles. If the railways are in the hands of the state, political influences will make themselves felt in the appointment of officials, the construction of time schedules, the fixing of rates, and the building of new lines. Their effect cannot be other than disastrous. On the other hand, state administration of such great financial interests must react detrimentally upon the general politics of the country.

The important interests connected with the railways would make possession of power even more than it is to-day desirable; the interests involved would more and more complicate political contests and render them more fervid and desperate. On the other hand, the central power would be able to dispense such great benefits and would be master of so considerable an army of officials that it might bring to bear a considerable influence upon deputies in the Assembly and even upon electors themselves. Those who feared the consequences of these influences in their bearing upon parliamentary independence, and even upon freedom in the exercise of the rights of suffrage, ought to oppose the law.

Economic and Financial Arguments. In the polemics of those opposed to purchase, along with these political considerations, others economic and financial also played a great part. Two important brochures, setting forth the arguments of this character, one by M. Numa Droz,¹ ex-President of the Swiss Confederation, the other by Dr.

¹ Le rachat des chemins de fer par Numa Droz. Bibl. Musée Sociale, No. E 8455.

Steiger,¹ created a real sensation in Switzerland. We cannot undertake here a complete analysis of the ideas developed in these two pamphlets, but shall confine ourselves to enumerating the more important points in their argument.

Purchase of the railways, according to these writers, is above all a question in economics. Those who recommend the purchase seek to awaken in the public mind grand expectations; they promise, in event of the acceptance of the law, great improvement in the service; and they affirm at the same time that the operation of the railways shall impose upon the federal government no risk. Yet all their promises are subordinated to that question which dominates the debate: "Will the railways in the hands of the federal government yield a revenue which will make possible the realization of the hopes raised in connection with this scheme?"

In answer to that question the message of the federal government replies: "Yes;" and it gives figures bearing upon that point. These figures it is necessary to examine.

We have seen that the future budget drawn up by the Federal Council is based upon a valuation of the railways at 964,000,000 francs, in round numbers, the amount to be paid to the railway companies. But this total of 964,000,000 francs has been obtained from estimates very favorable to the Confederation and very unfavorable to the companies: the companies do

¹ Zur Orientierung über die Frage der Eisenbahnverstaatlichung in der Schweiz, von Dr. jur J. Steiger. Bibl. Musée Sociale, No. E 4131.

not accept these estimates. They believe their roads worth much more than the amount offered by the Federal Council. M. Droz has estimated at more than 300,000,000 francs the difference in the estimates of the purchase price made by the Confederation and by the companies. This divergence will become the subject of legal adjustment which ought to be effected in the Federal Courts. On the supposition that the Federal Courts allow the companies only one-half the difference, that is 150,000,000, the capitalization of the federal railways is increased by that amount; and henceforth the budget of the Federal Council will be entirely upset by the payment of interest upon this capital. Other factors may also enter in to disturb the budget balance. In the first place, it is not certain that the federal government will be able to borrow at $3\frac{1}{2}$ per cent, and at par, the amount requisite for purchase of the railways. Finally, it has not been proved that net receipts of operation will regularly increase from year to year according to the estimate made by the Federal Council in its calculation. But on the supposition even that both these conditions are realized, a deficit may arise in the budget. In fact, the Federal Council has neglected to take into account in its calculations many elements which will nevertheless burden its budget of expenditures.

The most important of these factors are the necessary annual expenditures for improvement of the roads. The accounts of the railway companies show that during the last few years the five principal companies have expended *annually* about 13,000,000 francs for repairs and

improvements of the lines, work-shops, etc. The expense of these works does not enter into the budget of operating expenses. The outlays thus necessitated go to swell the construction account of the companies, and are covered by new loans. Nevertheless, the Federal Council in its budget has taken into account only operating expenses of the companies, and has omitted altogether any account of these improvements. It is not at all likely that the federal government will be able to spend less in the completion of its system than the present companies. There may result on this account an annual deficit of from 10,000,000 to 12,000,000 francs.

Neither has the Federal Council in its budget taken any account of the sums necessary for the payment of interest and capital which must be procured for tunneling the Simplon, later the Alps of West Switzerland, and finally for the possible purchase of secondary lines. Nevertheless, the pledge which the federal government has given in the purchase act, renders one and all of these expenditures inevitable sooner or later. Here may be a new occasion of deficit on account of the federal railways.

Finally, the Federal Council has promised in its message to introduce uniformity in its freight and passenger tariffs throughout the Swiss railway system, based upon the lowest rates now in operation. It has at the same time recognized the fact that this uniformity would result, at least at the start, in reducing receipts by 4,700,000 francs. It has not deducted this sum of

4,700,000 francs from the present current receipts of the companies, and it has made its calculations without taking into account this deduction. It hopes, it is true, that increased traffic will compensate for reduction in rates; but such compensation will certainly not manifest itself for a number of years if at all. During the earlier years, all or part of this sum will be added to the federal liabilities.

From these calculations it becomes evident that the budget for the operation of the federal railways will, in all probability, present a considerable deficit. Therefore it will not be possible to pay off the railway debt, and one of the principal arguments brought forward in favor of the purchase vanishes. The Confederation is likely, rather, to contract each year 10,000,000 or 12,000,000 francs of new loans for improvements. And far from having paid off its debt by the middle of the next century it will find itself embarrassed with liabilities exceeding a milliard and with a new debt of 600,000,000 or 700,000,000 francs. To avoid great annual deficits, the federal administration must operate the railways on a strictly economic basis. Instead of reducing transportation rates, it may perhaps be forced to increase those rates. No legislative enactment will be able to obviate this necessity, propositions tending to guarantee the public against possible increase in tariff rates having been rejected by the Federal Assembly. The federal government will find itself unable to keep the promises which it has made with regard to improvement of service, or higher salaries.

Messrs. Droz and Steiger, and others of like opinions, affirmed therefore that the purchase from a financial point of view would be an unwise action on the part of the state. Was it not therefore a dangerous undertaking for a small country such as Switzerland to contract an enormous debt which it would find difficulty in discharging, and the interest of which must be earned from operation of railways? Would not the contraction of so considerable a loan, a part of which must undoubtedly be placed in foreign countries, compromise the financial independence of the federal government? And why run these risks, when the necessity of economy must prevent the federal government from keeping the promises so freely made by those favoring purchase?

Such were the chief arguments brought forward against purchase, and they form the counterparts of the arguments brought forward in the message of the Federal Council.¹ Many other arguments on either side might be cited. One might easily recount along with appeals to rational consideration of the question, other special appeals to political and social passions among those favoring purchase. These latter did not rely solely upon the serious arguments brought forward in support of their opinion but they profited by, and even abused, the unpopularity which several of the railway companies suffered in some of the Swiss cantons, and took occasion therefrom to direct popular prejudice against shareholders in the companies and against pri-

¹ See above, Page 410.

vate operation of railways in general. The fact that the shares in these railway companies were partly held by foreigners was largely exploited. Those favoring purchase sought to present purchase as a movement essentially national in character, and thus they sought to bring discredit upon their opponents.

In a word, the campaign for and against the purchase of the railways was one of the most violent which has been experienced in Switzerland for a long time. During the months of January and February public opinion occupied itself with no other question. Numerous popular meetings took place in all the cantons. A great many pamphlets were published and distributed gratuitously to the people.¹ Newspaper discussions became very active. Rarely has any question aroused passionate public opinion to the extent that this question of purchase of the railways has done.

The vote was taken on the 20th of February. It called out an unusual number of voters. Out of 734,000 citizens having the right to vote, 570,000, in round numbers, exercised that right. This is the largest proportion of votes ever cast. The purchase law was accepted by a majority of over 200,000, the votes standing 386,634 for to 182,718 against.

The votes were distributed as follows among the several cantons:

¹ Among other pamphlets may be mentioned those written by Messrs. Droz and Steiger, one by M. Tallichet, director of the *Bibliothèque universelle*, entitled, "Le peuple Suisse, doit-il racheter ces chemins de fer?" *Bibl. du Musée Sociale*, t^o. n. 8456.

	Yes.	No.
Zurich -----	69,859	13,893
Berne -----	74,287	20,019
Lucerne -----	14,799	12,351
Uri -----	1,130	2,906
Schwytz -----	3,204	5,331
Obwald -----	941	2,016
Nidwald -----	1,160	1,159
Glaris -----	5,384	699
Zoug -----	2,557	1,593
Fribourg -----	6,785	17,560
Soleure -----	12,976	4,173
Bâle-Ville -----	9,498	3,364
Bâle-Campagne -----	8,972	1,317
Schaffhouse -----	5,012	2,427
Appenzell (Rhodes Extér) -----	8,646	1,294
Appenzell (Rhodes Intér) -----	813	1,705
St. Gall -----	38,091	7,736
Grisons -----	11,123	7,979
Argovie -----	33,759	7,261
Thurgovie -----	18,588	2,179
Tessin -----	11,909	6,970
Vaud -----	25,915	22,955
Valais -----	5,150	17,737
Neuchâtel -----	9,473	9,856
Genève -----	6,603	8,238
Total -----	386,634	182,718

This overwhelming majority on the 20th of February in favor of the purchase was a general surprise, as well for the victors as for the defeated. On either side there had been anticipated a plurality of not more than 50,000 to 80,000 votes, at the most, and although appearances seemed to favor acceptance of the law after the vote taken in the Assembly, many well informed persons on the eve of election believed the law would be rejected.

The Swiss people once more have baffled all conjectures. The year previous, on the 28th of February,

1897, they had given a majority of 60,000 against a state banking law submitted by the same parties which submitted the railway purchase act. Has public opinion revised its judgment given at that time, and has it now wished to express its allegiance to the principle of state socialism which it rejected a year ago in one of its declarations? One may not infer this absolutely. The motives determining its vote appear somewhat different in character. The majority of the voters have evidently considered railways to belong to the public service in the same way as posts, telegraphs, etc., etc., and they have wished to eliminate private influences in the belief that private companies sought only, in the service which they gave, a source of profit. The desire to free the management of railways from foreign influence also certainly played a great part in this vote; and the great mass of the voters especially believed the promises widely made by persons in authority, magistrates and deputies, would, in event of approval of the purchase act, be fulfilled. They have believed in reduction of the rates, improvement of service, and all sorts of transportation facilities. Finally, the railway officials voted in great majority for purchase, and under the leadership of M. Sourbeck conducted an active propaganda in its favor, persuaded that their condition would be ameliorated if they passed from the service of private companies into that of the federal government. In a preceding number¹ it has been pointed out that the

¹*Serie B. Circulaire n° 8. La grève des employées de chemin de fer en Suisse, 1896-97.*

federal authorities have always shown themselves favorably disposed in considering demands made by employees against the private companies. Railway employees have inferred that they ought to vote in favor of purchase without asking themselves whether or not they have anything to lose in case the state, now their ally, shall become their master.

By the vote of February 20th last, the Swiss people rendered a decision of great importance, and a decision which must inevitably react throughout the political, economic, and social life of the country. It remains for the federal authorities to put the law into effect. On the 22d of February the Federal Council resumes the franchise rights of a portion of the lines of the *Nord-Est*. Other lines follow. If the purchase is executed successively according to the terms of the several franchises, the federal government, in 1903, will have come into possession of the systems of the *Jura-Simplon*, the *Centrale*, the *Nord-Est* and the *Union Suisse*, and by 1909 into the possession of the *Gothard*. For the purchase of the *Gothard* railway, negotiations must be made with Germany and Italy, which furnished important subsidies for the construction of that line. For the rest, it is possible that the federal government may come into the possession of the railway systems before 1903, if it decides to treat with the companies by effecting special mutual agreements, authorized under the law. In the absence of such agreements, and in event of any disagreements with the companies upon purchase valuations, the Federal Court will be appealed to to determine

questions relative to the calculation of indemnity to be paid shareholders.

The experiment which Switzerland is about to undertake cannot fail to be a very instructive one. It will be interesting to see what measures the federal government will take in effecting the purchase of the railways, in procuring the necessary funds, and in operating the roads. It will be especially interesting to see whether or not the state will be able to keep the promises which have been made in its name; and to compare private operation under state control with direct operation by the state in a democracy such as Switzerland.



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